Supreme Court, U. S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 77-1334

JEAN LIEBERT,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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No.

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UNITED STATES

PETITION FOR A WRIT O
THE UNITED STATES CO
FOR THE THIRD

Petitioner prays tha
issue to review the judgm
Court of Appeals for the T
in the above-entitled case

Opinions B

The judgment order
is not yet reported and is
infra.

THE UNITED STATES

m, 1978

Petitioner

OF AMERICA,

Respondent

F CERTIORARI TO
URT OF APPEALS
IRCUIT

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a writ of certiorari
nt of the United States
hird Circuit, entered
on February 22, 1978.

low

of the Court of Appeals
eprinted in Appendix A,

Jurisdiction

The judgment of the Court of Appeals was entered on February 22, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Did the court below err in refusing the defendants' motions to suppress evidence obtained through the interception of wire communications?

2. Is the evidence pertaining to defendant Jean Liebert sufficient to sustain her conviction since the government failed to prove that there was an exchange of lay-off wagers and other gambling information between Liebert and the Harkins-Iannelli business?

3. Is the evidence sufficient to sustain the conviction as to defendants in that the government failed to prove the gambling business had a gross revenue of $2,000.00 on any single day as alleged in the indictment?

4. Should defendant's sentences be vacated and the case remanded to the district court for re-sentencing since the trial court failed to state the reasons for the sentence imposed?

Statutes Involved

The statutory provisions involved, 18 U.S.C. §1955, 18 U.S.C. §2518(1)(c) and (3)(c), are set forth in Appendix B, infra.

Statement of the Case

On June 13, 1975, the Federal Bureau of Investigation began court-authorized interception of incoming and outgoing telephone calls over four telephones located in the United States Post Office in downtown Pittsburgh, Pennsylvania, and two telephones located in private residences. One of those two telephones was located in co-defendant Joseph Iannelli's home.

On July 23, 1978, the Federal Bureau of Investigation began court-authorized interception of

incoming and outgoing telephone calls over two telephones located in the residence of petitioner.

On February 10, 1977, the petitioner and eleven other individuals were indicted and charged in two counts with operating a sports gambling business in violation of 18 U.S.C. §1955 and §371.

On May 9, 1977, after extensive pre-trial proceedings, the case came on for trial before Chief District Judge Gerald J. Weber and a jury. Immediately prior to trial, the government dismissed the charges against defendants John Deep and Charles Jules Kelly. Defendant Theodore Michenzi entered a guilty plea to Count Two.

The government's entire case was based upon the evidence disclosed by the court-authorized interceptions. That evidence was interpreted for the jury by FBI Agent William Holmes, a purported gambling expert.

At the close of the government's case, a judgment of acquittal was granted as to defendant Louis Ciancutti. The defendants then presented the

testimony of Sherman Goldman, a Chicago bookmaker who had reviewed the intercepted phone conversations relied upon by the government. It was his opinion that the government's evidence showed that only four of the defendants (Harkins, the Iannellis and Gnazzo) were engaged in the gambling business charged in the indictment.

(a)

On May 26, 1977, the jury returned verdicts of guilty as to all remaining defendants except William Tyce McCullough. McCullough was acquitted on both counts.

On July 8, 1977, petitioner was sentenced to three years imprisonment, said sentence to be suspended after petitioner shall have served sixty (60) days in confinement, with the remainder of the sentence to be served on probation under the condition that she pay a fine of $1,000.00 in equal monthly installments over the period of probation.

A more detailed statement of the facts, as they are relevant, are discussed below.

Reasons For Granting The Writ

I.

THE COURT BELOW ERRED IN REFUSING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED THROUGH THE INTERCEPTION OF WIRE COMMUNICATIONS

A. The affidavits failed to establish the need for interception.

Through the enactment of 18 U.S.C. §2510, et seq., Congress granted to law enforcement agencies a limited right to employ electronic surveillance in conducting an investigation. A key provision of this act is the requirement that the government establish a need for interception.

The standard which must be met in establishing that need is set forth in §2518(1)(c), which requires that each application must include:

> "A full and complete statement as to whether or not other investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous."

This standard is reflected in §2518(3)(c), which provides that in issuing the order, the judge shall determine whether:

> "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous."

Through this section, the government is thus required to make some preliminary assurance that electronic surveillance will be used only in such instances where other methods of investigation have failed or, for reasons which are specified and reasonable, are likely to fail. The Third Circuit, recently reaffirming its understanding of this requirement, stated as follows:

> "Congress has established this additional precondition to obtaining a §2518 authorization in order to make doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications. These procedures (are) not to be routinely employed as the initial step in criminal investigations. '(W0iretapping is not (to be) resorted to

> in situations where traditional investigative techniques would suffice to expose the crime.'" United States v. Vento, 533 F.2d 838, 849 (3rd Cir. 1976)

In Vento, the court also reaffirmed its view first adopted in U.S. v. Armocida, 515 F.2d 29, 37-38 (3rd Cir. 1975), that it would take a "pragmatic" approach to §2518(1)(c):

> "We held that the government's showing is to be 'tested in a practical and commonsense fashion.' There is no requirement that every investigative methodology be exhausted prior to application for a §2518 authorization. Investigators are not obliged to try all theoretically possible approaches. It is sufficient that the government show that other techniques are impractical under the circumstances and that it would be unreasonable to require pursuit of those avenues of investigation. The government must, however, fully explain to the authorizing judge the basis for such a conclusion." U.S. v. Vento, supra, at 849. (Emphasis added)

The function of the courts in protecting the public against unwarranted electronic surveillance, while at the same time testing the government's

attempt at statutory compliance in a "practical and commonsense fashion", obviously requires a case by case analysis. Here, there are two applications to be considered: the first, dated June 13, 1975, which incorporates by reference the affidavits of FBI Agent Corvin and Postal Inspector Cook, and, the second, dated July 23, 1975, which incorporates by reference the affidavit of Agent Coyle, as well as the previous affidavits of Corvin and Cook. Each application must be considered individually, and each must separately meet the requisite statutory requirement. Copies of the two affidavits are reprinted in Appendix C, infra, (11 a).

Petitioner contends that the affidavits in support of each application in this case inadequately describe why normal investigative procedures have been unsuccessful or will fail or be too dangerous.

1. The Wiretap Application of June 13, 1975.

The application of June 13, 1975, executed by Stephen I. Goldring, an attorney of the United States Department of Justice, states:

"(c) The attached affidavits contain a full and complete statement explaining why normal investigative procedures either have been tried and failed or reasonably appear unlikely to succeed if tried." Affidavit of Goldring, June 13, 1975

Thus, the government relies exclusively on the affidavits of Corvin and Cook to sustain its compliance with §2518(1)(c). Since the affidavit of Inspector Cook relates solely to a recounting of the highly productive visual surveillance conducted in this case and does not purport to set forth the basis for the government's conclusion that traditional investigative techniques are inappropriate, the need for interception is supported only by the Corvin affidavit.

The Corvin affidavit discusses the following reasons for the necessity of interception:

1. Searches and seizures "in the past" have not yielded sufficient evidence because
   a. Gamblers frequently do not keep records;

b. If records are maintained, they are frequently destroyed immediately prior to or during the raid; and

c. Records that have been seized in the past have not been sufficient. (Corvin affidavit, Appendix C, infra, p. 11a)

2. Surveillance has been difficult because the subjects are surveillance-conscious and suspicious of all strangers. In addition, the location of the Barbaro residence makes unobserved surveillance extremely difficult. (Corvin affidavit, p. 11 a)

3. There are no known witnesses capable of and willing to testify. (Corvin affidavit, p. 11a)

These boilerplate conclusions are based, not upon the particular circumstances of this case, but upon Corvin's general experience with other unrelated gambling investigations. As stated in U.S. v. Vento, supra, this is contrary to the restrictive intent of Congress:

> "Courts have declared that applications whose sole bases are general declarations and conclusory statements by the affiants will not support authorizations. The use of 'boilerplate' and the absence of particulars in requests for wiretap authorizations have not been permitted lest wiretapping become established as a routine investigative recourse of law enforcement authorities, contrary to the restrictive intent of Congress." U.S. v. Vento, supra, at 850.

Not only does this affidavit contain boilerplate language, but it is completely silent as to the possible use of several normal investigative procedures. It does not, for example, discuss general questioning or interrogation of witnesses under the grant of immunity or the infiltration of the organization by undercover agents or informants. These are techniques suggested in a discussion of the Act's legislative history. U. S. Congressional and Administrative News, 90th Cong., 2d Sess. (1968); Senate Report No. 1097.

Aside from the boilerplate language and the omission of any discussion as to other of the normal

investigative procedures, this affidavit is still insufficient to show a need for interception.

Corvin states that searches and seizures reasonably appear unlikely to succeed if tried. The standard of review here is set forth in U.S. v. Spagnuolo, 549 F.2d 705, 710 (9th Cir. 1977):

> "Where such techniques have not been so employed, the sufficiency of the affidavit depends on whether there is a showing that under the particular circumstances of the case the employment of such techniques 'reasonably appear unlikely to succeed if tried or to be too dangerous'. Any such showing requires setting forth an adequate factual history of the investigation and a description of the criminal enterprise sufficient to enable the district judge to determine, independently of an agent's assertions with respect to his or other agents' experiences, that ordinary investigative techniques very likely will not succeed...".

Clearly, no factual history has been set forth. No facts are set forth except possibly those relating to the agent's "prior experience". These are not

sufficient to enable a district judge to determine that searches and seizures would not succeed in this case.

Corvin also includes in his affidavit the flat statement that there are no witnesses capable or willing to testify.

However, Postal Inspector Cook's affidavit regarding the highly productive visual surveillance at the post office reveals numerous potential witnesses -- individuals who were suspected of participating in the alleged gambling operation. Although neither affidavit indicates any attempt to interview these witnesses or to secure their testimony, the affidavits aver that there are no known witnesses capable of and willing to testify.

The government has submitted to the authorizing judge a conclusion not supported by the facts. We think it clear, however, that the statute requires more than bald conclusion.

Traditionally, the government has used or otherwise compelled the testimony of live witnesses by the following commonplace procedures:

1. Eliciting testimony of willing informants before a grand jury;

2. Eliciting testimony under the compulsion of the subpoena power of informant and non-informant witnesses before a grand jury; and

3. Eliciting testimony under a grant of immunity pursuant to 18 U.S.C. §6001 from witnesses subpoenaed before a grand jury.

It is interesting to note that the legislative history specifically recognizes interrogation of witnesses under an immunity grant as a "normal investigative procedure". U. S. Congressional and Administrative News, 90th Cong., 2d Sess. (1968); Senate Report No. 1097.

The use of immunity was never discussed in the present affidavit. As has been pointed out, even if these individuals were unwilling to testify,

"The refusal of informants to testify is a matter for the Court to consider in authorizing electronic surveillance". U. S. v. Kalustian, 529 F.2d 589 (1976). By not exploring further the use of willing witnesses or witnesses who could be granted immunity, the government has failed to thoroughly apprise the Court of other alternatives to interception.

Here, as in Kalustian:

> "The affidavit does not enlighten us as to why this gambling case presented any investigative problems which are distinguishable in nature or degree from any other gambling case. In effect, the government's position is that all gambling conspiracies are tough to crack, so the government need show only the probability that illegal gambling is afoot to justify electron ic surveillance. Title III does not support that view." 529 F.2d at 589.

The affidavit here is insufficient to justify the need for interception because it does not give

full and complete particulars as to why other investigative procedures have not or would not succeed. Thus, the statutory command set forth in §2518 (1) (c) has not been met.

2. The Wiretap Application of July 23, 1975.

The July 23, 1975 application presents an interesting situation with regard to whether or not it complies with §2518(1)(c). In addition to an affidavit by FBI Agent Thomas J. Coyle, the application also attempts to incorporate by reference the affidavits of Agent Corvin and Postal Inspector Cook which had been previously submitted in support of the June 13 application.

Two questions are thus presented: (1) May the previous affidavits be used in support of the present application? and, if not, (2) is the Coyle affidavit alone sufficient to show the government's compliance with §2518(1)(c)?

A. The previous affidavits may not be used in support of the present application.

Of significance is the fact that the June 13 application sought to intercept telephone communications between entirely different individuals and over entirely different telephones than the present application.[1/] Therefore, the June 13 affidavits do not deal at all with the targets of the July 23 application -- Cammarata and Harkins. The previous affidavits, in terms of §2518(1)(c), have no factual relation to Cammarata and Harkins. The most that can be said of the prior affidavits, in terms of the present application, is that they relate to the Court the general experience of agents in conducting prior gambling investigations.

1/ The June 13 application sought an Order to intercept the wire communications of Sidney J. Elcock, Evans Howard, Harry Zelkowitz, Louis J. Kolarich and Joseph Iannelli at four separate telephones located in the post office in addition to the home phones of Iannelli and Elcock. The July 23 application sought an Order to intercept the wire communications of James Cammarata and John J. Harkins at telephones located in their residences.

This issue of tacking arose in Calhoun v. Maryland, 367 A.2d 40 (1977).[2/] In holding that the valid prior affidavit could not be used to cure the present defective affidavit, the Court stated:

> "What the state, in the instant case, did was to make an application supported by a valid affidavit and obtain an order thereon for a location on East Baltimore Street. Thereafter, it sought a new order for a location on McClean Boulevard, and in the affidavit in support thereof, attempted to fuse the allegations of the first affidavit, that normal investigative procedures would not be successful, by incorporating the prior affidavit by reference. If such a procedure were allowed, it is possible that the police could obtain a valid order based on a legally sufficient affidavit and then in a whole series of new applications incorporate the prior affidavit by reference so as to comply superficially with 18 USC §1528." Calhoun v. Maryland, supra, at pp. 45-46.

2/ While Calhoun is a state court decision, it is of precedential value because while the Act allows for concurrent state regulation, any such state statute is subject, at a minimum, to the requirements of the federal Act. 18 USC §2516(2).

At best, the Corvin and Cook affidavits "comply superficially" with §2518(1)(c). As the statute and case law require strict adherence to the procedural steps (U.S. v. Giordano, 416 U.S. 505 (1974)), the affidavits submitted in support of the June 13 application should not be considered in determining whether the July 23 application complies with §2518(1)(c).

B. The Coyle affidavit alone is not sufficient to show the government's compliance with §2518(1)(c).

In relevant part, that affidavit sets forth:

"My experience, and the experience of other Special Agents of the Federal Bureau of Investigation, who have conducted investigations of illegal gambling operations and with whom affiant has consulted, has shown that gambling raids and searches of gamblers in their gambling establishment have not, in the past, resulted in the

> gathering of sufficient physical or other evidence to prove all elements of the offenses they have committed. Through my experience and the experience of other Special Agents who have worked on gambling cases, I have found that gamblers frequently do not keep complete records and if such records are maintained, gamblers immediately prior to or during a physical search frequently destroy these records by dissolving them in water or by burning such records with specially designed flash paper. Additionally, records that have been seized in past gambling cases have generally been insufficient to establish the involvement of all the conspirators in the offense, the periods of operation which the seized records reflect, the gross amount of wagers accepted in a single day (because such records are difficult to interpret), the arrangements for payoffs for winning bets, and the methods of transfers in payments for receipt of gambling information." Coyle Affidavit, pp. 66a

The Coyle affidavit thus confines itself to a discussion of one investigative technique -- search and seizure. Moreover, the discussion is limited to "prior agent experience" and contains no facts which would enable the district judge, apart from the agent's experiences, to make an independent

determination. U.S. v. Spagnuolo, supra.

The affidavit does not reveal whether or not any other investigative procedures have been tried or even contemplated, much less an explanation "why normal investigative procedures have been tried and have failed and reasonably appear unlikely to succeed if continued." There is no discussion of surveillance, undercover operations or the use of live witnesses.

Agent Coyle states:

> ". . . surveillance, undercover operations and other means cannot disclose what is said over the telephones -- the means by which this illegal gambling business carries on its day-to-day operation." Coyle Affidavit, p. 66 a.

In essence, the government is asserting that the use of wiretaps is easier than other investigative techniques since the gambling organization conducts its business by telephone. While this may be true, it alone cannot serve to discharge the requirement of §2518(1)(c).

> "It is no doubt true that experienced agents at the outset of an investigation can anticipate with a fair degree of accuracy whether ordinary techniques will fail or prove to be 'too dangerous'. To delay the wiretap order while ordinary techniques are employed or to undertake to educate a district judge to enable him to appreciate their level of experience no doubt appears to such agents to be a waste of time and resources. Their perception may be accurate, but Congress has deprived it of decisive influence. The particularized showing here described is necessary. The district judge, not the agents, must determine whether the command of Congress has been obeyed." U.S. v. Spagnuolo, supra, 549 F.2d at 710, 711.

The Coyle affidavit, we submit, clearly does not comply with §2518(1)(c).

Thus, we contend that the Coyle affidavit standing alone is insufficient to support the need for interception required by §2518(1)(c). In addition, we further submit that the prior affidavits of Agents

Corvin and Postal Inspector Cook cannot be used to support the July 23 application. In the alternative, even if this Court would consider the prior affidavits, we contend that those affidavits are likewise insufficient to show compliance with §2518(1)(c). Accordingly, the communications seized pursuant to the July 23 application should have been suppressed.

C. The government's failure to comply with the Court's Order of June 13, 1975, requiring the submission of a five-day progress report showing the need for continued interception, requires that the evidence be suppressed.

An Order authorizing the interception of wire communications may require reports to be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. 18 U.S.C. §2518(6).

In his Order of June 13, 1975, authorizing the interception of wire communications, Judge Teitelbaum directed:

". . . that Stephen I. Goldring, Special Attorney, United States Department of Justice, shall provide the Court with a report on the fifth (5th), tenth (10th), fifteenth (15th) days following the date of this Order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception." (Emphasis added)

Continuing supervision by an impartial judicial officer, through the requirement of periodic reports ". . . enhance the protection of individual rights within the context of an extreme, yet essential, law enforcement activity. Such scrutiny is basic to the structure and constitutionality of the Act." U.S. v. Bynum (S.D.N.Y., 1973), 360 F. Supp. 400, 410 (Emphasis added)

The importance of this requirement is reflected in its legislative history:

"The reports are intended as a check on the continuing need to conduct the surveillance. At any time the judge is

convinced the need is no longer established, he may order the surveillance discontinued. Section 2518(1)(d) discussed above will serve to insure that extended surveillance is not undertaken lightly. This provision will serve to insure that it is not unthinkingly or automatically continued without due consideration." U.S. Code Cong. and Adm. News, Vol. 2, 1968, p. 2193.

As the Bynum court so aptly noted:

"The scope of surveillance is likely confined to reasonable bounds where the agents must systematically and continually explain their conduct to a judge, seek his approval for further interceptions, and conform their actions to his detailed instructions." 360 F.Supp. at 410.

"When a judge requires such reports at regular intervals, reviews the progress as it is related to him, and closely supervises the interception, 'the rights of affected individuals are most likely to be safeguarded." U.S. v. James, 494 F.2d 1007 (D.C. Cir. 1974)

Although the statute does not require five-day reports, leaving the decision to the decision of the authorizing judge, once he orders them, the requirement achieves the same status as a statutory requirement. This is evident by the fact that Congress made the failure to conform to the order of authorization a specific basis for suppression. 18 U.S.C. §2518(10)(a)(iii).

The first progress report was submitted on June 17, 1975. Since it did not show a continued need for interception, it failed to comply with the requirements of the authorizing order and further interception should not have been permitted.

This report dealt with interceptions from six telephones: 566-8329; 644-4549; 644-4553; 644-4550 (hereinafter referred to as Group A calls); 766-0714 and 373-1853 (hereinafter referred to as Group B calls). Group A calls were made from telephones located in the United States Post Office and Courthouse, and Group B calls were

made from telephones located in two private residences. The report states, with regard to both groups, that seven individuals were monitored accepting and relaying sports wagers and numbers bets, relaying winning numbers, giving line information, etc. Of the seven, only three were defendants in this case.

On June 17, 1975, interception of Group A calls was discontinued. The government stated as the reason:

> "It appearing that further electronic surveillance of (Group A calls) will not lead to disclosure of criminal activity other than the activity of a criminal nature which has already been disclosed. . . ".

It is interesting to note that the "criminal activity" referred to was disclosed by both physical and electronic surveillance. However, how much criminal activity was disclosed by the four days of wiretapping is not revealed. Prior to initiating the

taps, the government's physical surveillance conducted in the Post Office was highly productive. See affidavit of Postal Inspector Cook attached to application of June 13, 1975.

This report fails to show the need for continued interception. It does not even mention any need for continuing the two taps on the private residences. It does not restate or update any probable cause for the interceptions. It does not reveal the number of calls intecepted or how many of those calls were relevant to the investigation. The June 17 report is silent as to each of these issues and, therefore, it fails to satisfy the requirements of Judge Teitelbaum's Order.

The government's failure to comply with the Order should not be condoned by this Court. The government's error here is no mere technical omission, but constitutes a flagrant disregard for the court's directive with regard to a requirement

that plays a substantive role in the regulatory system. See, U.S. v. Chavez, 416 U.S. 562, 578 (1974). As this Court observed in U.S. v. Giordano, 416 U.S. 505, 527 (1974):

> [Suppression is required for a["failure to satisfy any of those statutory requirements that directly and substantially implement the Congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary device." (Emphasis added) See, also, U.S. v. Donovan, ___U.S.___, 97 S.Ct. 658 (decided January 18, 1977)

Since the court order authorizing the interception was violated, all evidence acquired under the June 13, 1975 Order, after the first five days, must be suppressed. As the July 23 wiretap was authorized as a result of the June 13 wiretap, any evidence resulting from that tap must be suppressed as fruit of the poisonous tree.

II.

THE EVIDENCE PERTAINING TO PETITIONER, JEAN LIEBERT, IS INSUFFICIENT TO SUSTAIN HER CONVICTION SINCE THE GOVERNMENT FAILED TO PROVE THAT THERE WAS AN EXCHANGE OF LAY-OFF WAGERS AND OTHER GAMBLING INFORMATION BETWEEN LIEBERT AND THE HARKINS-IANNELLI GAMBLING BUSINESS

The evidence at trial, consisting exclusively of tape recorded conversations derived from electronic surveillance as well as an analysis of those conversations by experts called by the government and the defense, establishes that petitioner, Jean Liebert, was an independent bookmaker. According to Special Agent William L. Holmes, the FBI expert, petitioner placed bets, characterized as lay-off wagers, with the Harkins-Iannelli gambling business in an effort to win the bet. If Liebert does, in fact, win her bet with Harkins or Iannelli, she is paid the full amount of the wager, and if she loses, she must pay to Harkins or Iannelli the full amount of the wager. Special Agent Holmes further stated that,

while petitioner would lay-off wagers to the Harkins-Iannelli business, there was no evidence that she ever received a single lay-off wager from Harkins-Iannelli business. Moreover, although Harkins or Iannelli may offer a line to Liebert to be utilized by her while betting against the Harkins-Iannelli business, the record, according to Special Agent Holmes, contains evidence that Liebert changed that line when concluding wagers with her own customers. Finally, Special Agent Holmes testified that there was no evidence that Liebert either owned, supervised, managed or directed the Harkins-Iannelli gambling business.

In his general discussion of the relationship of an independent bookmaker to a separate bookmaking business, Special Agent Holmes concluded that evidence that a bookmaker lays off wagers to another bookmaker is not, in itself, sufficient to sustain a conclusion that the lay-off bookmaker is

part of the gambling business to which the lay-off is made. According to Holmes, there must be evidence that there is an actual exchange of lay-off bets, a flow in each direction, between bookmakers, as well as "other factors" to enable the conclusion to be drawn that one bookmaker is part of or conducting the business of another. Not only did Special Agent Holmes fail to identify, with regard to this petitioner, a single "other factor" such as would support the opinion that Liebert was part of the Harkins-Iannelli gambling business, but Mr. Holmes stated clearly that there was no evidence of an exchange of lay-off wagers between Liebert and Harkins or Iannelli.

The expert called by co-defendant Harkins, Sherman Goldman, confirmed the factual analysis of the tape recorded conversations as they pertained to Liebert. According to Mr. Goldman, Liebert is an independent bookmaker who makes lay-off wagers with the Harkins-Iannelli bookmaking business, as well as with other unrelated and independent bookmakers. Mr. Goldman also

testified that the taped conversations reveal that Liebert makes line changes on her own which, in his opinion, indicates her independence from the Harkins-Iannelli business. Moreover, Mr. Goldman determined that there was evidence in the Liebert telephone conversations indicating that Liebert owed co-defendant Harkins money as a result of unsuccessful wagers which she placed with him and that he demanded to be paid.

Thus, the evidence in the case indicates that a bookmaker, in order to be deemed a part of another bookmaker's gambling business, must participate, at the very least, in an exchange of lines and lay-off bets with that other bookmaker, i.e., that the flow of betting activity must go in both directions between the two. The evidence in the case further establishes that, with regard to Liebert's relationship to the Harkins-Iannelli gambling business, the flow of wagers went only in one direction, from Liebert to Harkins or Iannelli, but never from the latter to Liebert.

Both the Fifth and the Eighth Circuits have considered this issue and have concluded, like the experts, that there must be an actual exchange of lay-off wagers between two bookmakers to establish both of them as part of a single gambling enterprise. United States v. Milton, 555 F.2d 1198 (5th Cir. 1977); United States v. McCoy, 539 F.2d 1050 (5th Cir. 1976); United States v. Box, 530 F.2d 1258 (5th Cir. 1976); United States v. Thomas, 508 F.2d 1200 (8th Cir.), cert. denied, 421 U.S. 947, 95 S.Ct. 1677 (1975). In these cases, it is quite clear that in order to sustain a finding that two bookmakers are part of the same gambling enterprise, there must be evidence of a "constant exchange of line information between the two", as well as a "consistent pattern of lay off betting . . . between two bookmakers". United States v. Milton, supra, at 1201. Since, based on the facts of the instant case, such a finding is impossible since both line information and bets were not exchanged between petitioner Liebert and Harkins and Iannelli, the government's proof, as measured against the legal standard articulated by the Milton and Thomas line of cases, fails to support the conviction of petitioner Liebert.

In this particular case, the matter is further complicated by the fact that, under Pennsylvania

law, which 18 U.S.C. §1955 requires to be violated in order to activate the federal anti-gambling prohibition, the mere placing of a wager with a bookmaker is not a crime. See generally Pennsylvania "Crimes Code", 18 P.S. §101, et seq., as amended. In United States v. Milton, supra, at 1201, the Fifth Circuit recognizes that "bets between bookmakers may be personal wagers". The bets between Liebert and co-defendant Harkins or Iannelli are, without a factual showing of an "exchange" of line and bets, no different than the bets of any bettor with his bookmaker. Under these circumstances, it is patently unfair and violative of due process of law to assign criminal culpabaility to Liebert for her betting activity with co-defendants Harkins and Iannelli merely because she is also a bookmaker having customers of her own, and not assign criminal culpability to others who place bets with a bookmaker but are not bookmakers themselves. The "Crimes Code" of Pennsylvania does not purport to make this distinction, nor should the courts in interpreting the scope of 18 U.S.C. §1955.

III.

THE GOVERNMENT FAILED TO PROVE THAT THE GAMBLING BUSINESS HAD A GROSS REVENUE OF $2,000.00 ON ANY SINGLE DAY

The indictment alleged that petitioner was involved in an illegal gambling business which had a "gross revenue of $2,000.00 or more on one or more single days" in violation of 18 U.S.C. §1955. Petitioner contends that the government failed to prove this specific allegation and that the evidence is, therefore, insufficient to sustain the conviction.[3/]

It is beyond dispute that ". . .[t]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable

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3/ The sufficiency of the evidence was challenged by motions for judgment of acquittal made after the close of the government's case and after the close of all testimony.

doubt of every fact necessary to constitute the crime with which he is charged". In re Winship, 397 U.S. 358, 364 (1970). Here, it is petitioner's position that she was convicted of the offenses alleged in the indictment without such proof.

In an attempt to show that the alleged gambling business had a gross revenue of $2,000,00 or more, the government introduced evidence derived from the monitored telephone conversations. FBI Agent William L. Holmes, who testified for the government as an expert in gambling, analyzed these conversations and determined the amounts of money wagered by bettors over the Iannelli and Harkins telephones on two specific days. His testimony was as follows:

> "Q. Now with regard to the first series of monitored conversations, those dealing with the Iannelli telephone, telephone number -- area code 412 -- 766-0714, did you analyze off of those monitored conversations one day's

worth of wagers, and were you able to determine what the amounts wagered were?

A. Yes, sir.

Q. Would you detail now the day that you analyzed and the amounts wagered on that day?

A. On 6/23, 1975, the total amount wagered was $13,673.00.

Q. On the Iannelli telephone?

A. Yes, sir.

Q. Now with respect to the total wagers accepted during a one-day period on the two telephones being operated by John Harkins, Hymie, telephone numbers -- area code 412--931-0575 and area code 412-931-0384, did you analyze one day off of those two telephones?

A. Yes, sir.

Q. And which day was that?

A. On 7/26, 1975.

Q. And as a result of that analysis, were you able to determine the amount

wagered for that one-day period off of those two telephones?

A. Yes, sir, I did.

Q. And what amount was that?

A. $62,920.00."

This testimony was insufficient to prove that the gambling business had a "gross revenue of $2,000.00 or more on one or more single days". It is our position that "amounts wagered" is not the correct measure of "gross revenue".

In United States v. Ceraso, 467 F.2d 653 (3rd Cir. 1972), the defendant claimed that "gross revenue" was "net profit". The Court rejected that claim, pointing to the inordinate burden that such a construction would place on the government; the bookmaker's "carefully secreted" records would have to be introduced to prove his expenses. 467 F.2d 657. We agree that "gross revenue" is not "net profit", but gross revenue is also not "total amount wagered".

Revenue means income; gross revenue is total income before expenses.[4/] Gross revenue cannot be simply the amount wagered because there may not be any income derived from the wager itself. When Congress enacted §1955 and thereby asserted its power to regulate gambling, it did so on the premise that the money derived therefrom flows in interstate commerce. See, 84 Stat. 936; and Remarks of Senator Hruska, 115 Cong. Rec. 10736 (1969) quoted in United States v. Ceraso, supra, at 657. In the case of sports betting, no money changes hands, no obligation to pay occurs, until the completion of the particular sporting event on which the wager has been made. Gross revenue is the total amount won and can be easily computed by comparing the wagers made with the scores of the games. This imposes no extraordinary or unreasonable burden upon the government, and there

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4/ Black's Law Dictionary, 1482 (4th Ed. Rev. 1968); The Random House College Dictionary, 1129 (Rev. Ed. 1975).

are no carefully secreted records necessary. The government need only look at a newspaper to find which games the bookmaker won and which ones he lost.

This principle is best illustrated by a review of a portion of the cross-examination of the government expert concerning a telephone conversation on June 20, 1975, at 7:31 P.M., between defendants Gnazzo and Iannelli during which Gnazzo is placing bets with Iannelli. Each bet is explained as to the amount wagered, the type of bet and the team picked to win. The witness testified that the bets made during this conversation were representative of typical sports bookmaking activity with regard to baseball. He testified that the following elements, among others, were critical to a sports bookmaking operation: line information, credit, the occurrence of the sporting event and the final score of the event. In addition, in baseball, if a specific pitcher does not pitch the game bet on, the bet is cancelled. Likewise, if

the game is not played or terminates before eight innings elapse, then the bet is cancelled. The witness further explained that it is necessary for the bookmaker to know who won and who lost in order to determine whether he profits from a bet. The witness was then shown a portion of a newspaper dated June 21, 1975, which listed the scores from the baseball games played on June 20, 1975. Referring to each of the bets placed during the Gnazzo-Iannelli conversation, the witness determined from the scores that the bookmaker lost each bet. Consequently, it is submitted that the bookmaker had no income whatsoever from those bets.

The Court in Ceraso believed the legislative history of §1955 indicated that Congress intended "gross revenue" to mean "amount wagered". Senator Hruska was quoted:

> "Any bookmaking or numbers operation which does more than $2,000.00 in business in one day . . . must have a substantial adverse effect in the flow of

> moneys and goods in interstate commerce. (Emphasis by the Court) 115 Cong. Rec. 10736 (1969)." 467 F.2d 657.

However, the "flow of moneys and goods in interstate commerce" cannot be affected until the bookmaker receives money. Furthermore, the scant language "doing more than $2,000.00 in business in one day" can hardly be considered clear evidence of Congressional intent. True, it does seem to rule out an interpretation of "gross revenue" as "profits", but it offers no support for the "amount wagered" interpretation either. If anything, it supports petitioner's claim that "gross revenue" is winnings, i.e., money paid or owed to the bookmaker.[5/]

5/ Additional support for petitioner's view of the legislative intent can be found in the "Statement of Findings and Purpose" which serves as the preamble to the "Organized Crime Control Act of 1970":

> "The Congress finds that: (1) organized crime in the United States is a highly sophisticated, diversified and widespread activity that annually drains billions of

5/ (continued)

> dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling. . . (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes. . . ". §1 of Public Law 91-452.

The "activity that annually drains billions of dollars from America's economy" cannot be the mere placing of wagers. A wager itself does not have any relation to "money obtained", nor does it, without more, produce money so "used". The above-recited Congressional findings presuppose the actual flow or exchange of moneys such that the interstate commerce power is triggered. However, the mere placing of a wager does not necessarily result in any flow or exchange of moneys.

A sports bookmaker is owed nothing, and he owes nothing at the time a wager is made. Whether the bookmaker wins or loses cannot be determined until the final outcome of the particular sports contest.

Congress can, and in other instances has, used specific, unequivocal language to refer to the total amount wagered. 26 U.S.C. §4401, for example, states:

> "There shall be imposed on wagers . . . an excise tax equal to two percent of the amount thereof."

The tax is clearly levied against the amount that is wagered. On the other hand, §1955 requires as an element of an illegal gambling business "a gross revenue of $2,000.00 in any single day". If Congress had meant the $2,000.00 figure to represent "total amount wagered", it could have so provided. Instead, it chose to refer to "gross revenue".

Here the government failed to prove that the gambling business had a "gross revenue" of $2,000.00 or more on any one day. The government can only point to the amount of money wagered, which cannot constitute "gross revenue". Accordingly, the petitioner's conviction is based upon insufficient evidence and must be reversed.

IV.

PETITIONER'S SENTENCE SHOULD BE VACATED AND THE CASE REMANDED TO THE DISTRICT COURT FOR RE-SENTENCING SINCE THE DISTRICT COURT JUDGE FAILED TO STATE THE REASONS FOR THE SENTENCE IMPOSED

This Court has approved a policy requiring that sentences be tailored to fit the offender. Williams v. New York, 337 U.S. 241 (1949); Williams v. Oklahoma, 358 U.S. 576 (1959). This philosophy of individual sentencing necessarily grants broad discretion to the trial judge who must determine which among the sentencing

alternatives and range of permissible penalties is the proper sentence to be imposed. The exercise of this discretion, which is almost totally unlimited, unstructured and unreviewable, is one of the most important and most easily abused powers possessed by the trial court.

The sentencing decision is of enormous consequence and although the trial judge is vested with wide discretion, he may not ignore sentencing guidelines established by this Court, nor is he free to ignore petitioner's constitutional rights.

It appears from the record that petitioner's sentence may have been excessive and that the trial judge may have ignored this Court's policy in favor of :individualizing sentences". The problem is that the trial court did not state its reasons for the imposition of the sentence, and, therefore, meaningful review of the sentence is not possible on the present state of the record.[6/]

6/ It has been recognized by commentators that one of the reasons that appellate courts have been reluctant to review sentences is that the appellate courts do not have access to a meaningful record. See, e.g., Note, Appellate Review of Sentences and the Need for a Reviewable Record, 1973 Duke L. J. 1357 (1973).

Requiring the sentencing judge to state his reasons for the imposition of a sentence will help rationalize the sentencing process and will assure a basis for meaningful appellate review.

A. Appellate courts do have authority to review sentences.

While federal courts have uniformly acknowledged that "a sentence imposed by a federal district judge, if within statutory limits, is generally not subject to review", see, e.g., Gore v. U.S., 357 386 (1958), appellate courts have had no trouble finding that they do have the authority to review when they are inclined to.

Several cases have suggested that statutory authority to review sentences does exist under 28 U.S.C. §2106. See, e.g., U.S. v. Rosenberg, 195 F.2d 583, 604-607 (2nd Cir.) Other appellate courts have indicated that where a trial judge plainly abused his discretion, the court has the power to review the sentences without any reference to statutory authority. See, e.g., U.S. v. Hetherington, 279 F.2d 792 (7th Cir.); Livers v. U.S., 185 F.2d 807 (6th Cir.) The Second Circuit has examined what it has termed the "integrity" of the

sentencing process, McGee v. U.S., 465 F.2d 357 (1972), and the First Circuit has expressed some dissatisfaction with the severity of a selective service sentence. U.S. v. Walker, 469 F.2d 1377 (1972). Sentences within the statutory maximum have been reviewed and vacated by the Sixth and Seventh Circuits. U.S. v. McKinney, 466 F. 2d 1403 (6th Cir. 1972); U.S. v. Charles, 460 F.2d 1093 (6th Cir., 1972); U.S. v. Wiley, 278 F.2d 500 (7th Cir., 1960)

Finally, Supreme Court support for the proposition that federal appellate courts generally may not review a sentence is pure dicta, 2 C. Wright, Federal Practice and Procedure, §533 at 451-452 (1969). In spite of its own language to the contrary, in cases such as Blockburger v. U.S., 299 S. Ct. 180 (1932), this Court, in Yates v. U.S., 356 U.S. 363, (1958), not only reviewed the severity of a sentence, but also set it aside and substituted its own sentence.

More than a decade ago it was reported by the judicial conference that the judges of the Second and Third Circuits "overwhelmingly favor

some method of reviewing sentences". 1964 Report of Judicial Conference (1965) 86. Appellate review of sentences was advocated by the President's Crime Commission which stressed the importance of this practice as affording "the occasion for a systematic and continuous examination of sentencing policy by an appellate court". The Challenge of Crime in a Free Society (GPO 1967) 145. The Commission added:

> "Appellate review would encourage the development of uniform and considered sentencing policies within a jurisdiction. It leads both the trial court and the appellate court to give sustained and explicit consideration to the justification for particular sentences. It provides a workable means of correcting unjust and ill-considered sentences, particularly those in which the punishment imposed is grossly inappropriate." Id. at 145-146

It has also been noted that:

> ". . . at this stage of our history, with wide-spread public hysteria regarding control of crime, accompanied by scapegoating of the judiciary for permitting

escapes from punishment, the institution of appellate review of sentences could serve to remove one of the sources of antagonism." Cipes, Moore's Federal Practice, Vol. 8, §32, pp. 127-129

B. There are substantial benefits in requiring the trial court to state its reasons for the imposition of sentence.

These benefits have been ably summarized by the Second Circuit in U.S. v. Brown, 479 F.2d 1170, 1172-1173 (1973):

> "[It] would be a 'powerful safeguard against rash and arbitrary decisions' at the crucial stage of the criminal process where the defendant's liberty is at stake. M. Frankel, Criminal Sentences -- Law Without Order 41 (Hill and Wang 1972). It would serve 'to promote thought by the decider, to compel him to cover the relevant points, to help him eschew irrelevancies -- and, finally, to make him show that these necessities have been served.' Id. at 40. It would also promote fairness by minimizing the risk that the sentencing court might relay on misinformation or on inaccuracies in the

presentence report. See, United States v. Needles, 472 F.2d 652 (2nd Cir., 1973). If a misapprehension on the court's part occurs, the defendant and his counsel would then have theopportunity to answer and explain, pointing out the error. A sphinx-like silence on the court's part precludes anyone (including the parties, the judge and an appellate tribunal) from learning whether he acted in error. Furthermore, a statement of reasons by the court could prove to be of considerable assistance to prison and parole authorities in later determining the type of institution in which the defendant should be incarcerated and the time and conditions of parole."

The requirement of a statement of reasons might also help bring about more uniformity of sentences. Disparity in sentencing is one of the most criticized aspects of the sentencing process. Requiring the trial judge to articulate his reasons for imposing a particular sentence could help to eliminate that problem. Coburn, Disparity In Sentences and Appellate Review of Sentencing, 25 Rutgers L. Rev. 207 (1971).

In 1971, the Wisconsin Supreme Court, in McCleary v. State, 49 Wis. 2d 263, 280, 182 N. W. 2d 512, 521, adopted the requirement that at the time sentence is imposed, the court must articulate its reasons for that sentence:

> "In all Anglo-American jurisprudence, a principal obligation of the judge is to explain the reasons for his actions. His decisions will not be understood by the people and cannot be reviewed by the appellate courts unless the reasons for decisions can be examined. It is thus apparent that requisite to a prima facie valid sentence is a statement by the trial judge detailing his reasons for selecting the particular sentence imposed."

> "(W)e apply (the requirement that decisions be justified). . . to affairs of clearly less consequence, yet we place no burden of explanation upon the judge who decides that the defendant before him must be locked up for ten years, rather than five or one." Note, Appellate Review of Sentences and the Need for a Reviewable Record, 1973 Duke L. J. 1357, 1375 (1973)

Recently, the Pennsylvania Supreme Court, in Commonwealth v. Riggins, 377 A.2d 140, 149 (1977), imposed upon the trial courts the requirement that it state its reasons for the particular sentence imposed:

> "After evaluating the various arguments, we are persuaded that the sentencing process will be improved by requiring a trial court to state, on the record, the reasons for the sentence imposed."

Finally, it should be noted that in those jurisdictions which permit appellate review of sentences, the "availability of sentence review has actually precipitated a general decrease in the number of overall appeals in criminal cases". Coburn, Disparity in Sentences and Appellate Review of Sentencing, supra, at 218 (1971). (Emphasis in original)

C. Application of these sentencing principles to this case.

Nationally, sixty-seven percent (67%) of all individuals convicted of the offense that petitioner was convicted of received a sentence of probation. The figure is sixty-one percent (61%) for the District Court in which the case was tried. Nonetheless, none of the defendants in this case received a probationary sentence. It appears from the following remarks of the trial judge at the time of sentencing that he may have ignored this Court's policy in favor of "individualizing sentences" because of his general view of organized gambling:

> "When you read the legislative history of the Act and the pernicious influence of organized gambling here, you'll see why Congress was so intent on this, and you'll see why the government went after these people . . .
>
> "It's not an innocent little game. It's a dirty, vicious business. . . .
>
> "We have got to impress you and other people that the government is serious about the organized gambling business."

The trial court's remarks were totally inappropriate. The evidence showed nothing more than a gambling business. While that business operated in violation of federal law, it is important to remember that the crime here was victimless. In fact, it is hard to conceive that this business could have flourished were it not providing a service desired by the public. That same service, it should be noted, is also now provided by Pennsylvania and numerous other states.

This was not a gambling business which engaged in acts of official corruption or used strong-arm methods to collect its debts. Nor was it shown, despite approximately forty days of wiretapping, that any of the defendants engaged in any other type of criminal activity. Thus, while it is certainly conceivable that some gambling organizations may exert a "pernicious influence" and may be a "dirty, vicious business", such was clearly <u>not</u> the case here.

However, without knowledge of the court's reasons for imposing the sentence it did, meaningful appellate review is not possible. Petitioner,

therefore, requests this Court to vacate the sentence and remand the case to the trial court for resentencing, with directions that the trial court state its reasons for the particular sentence imposed.

CONCLUSION

Based on the foregoing, the judgment of the Court of Appeals should be vacated and the case remanded to the district court for a new trial.

Respectfully submitted,

RICHARD H. MARTIN

BASKIN, BOREMAN, WILNER,
SACHS, GONDELMAN & CRAIG

Attorneys for Petitioner,
Jean Liebert

Appendix A - Judgment Order

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 77-2005

UNITED STATES OF AMERICA

v.

IANNELLI, JOSEPH a/k/a Joe a/k/a "45"

Joseph Iannelli,
Appellant

(Criminal No. 77-28-1, W.D. of Pa.)

- - - - - -

No. 77-2006

UNITED STATES OF AMERICA

v.

IANNELLI, NORMA a/k/a Norm a/k/a "45"

Norma Iannelli,
Appellant

(Criminal No. 77-28-2, W.D. of Pa.)

- - - - - -

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Appendix A - Judgment Order

No. 77-2007

UNITED STATES OF AMERICA

v.

LIEBERT, JEAN a/k/a Queenie

Jean Liebert,
Appellant

(Criminal No. 77-28-3, W.D. of Pa.)

- - - - - -

No. 77-2008

UNITED STATES OF AMERICA

v.

PIJANOWSKI, ZIGMUNT a/k/a Pidge a/k/a Ziggy

Zigmunt Pijanowski,
Appellant

(Criminal No. 77-28-4, W.D. of Pa.)

- - - - - -

Appendix A - Judgment Order

- - - - - -

No. 77-2009

UNITED STATES OF AMERICA

v.

HARKINS, JOHN a/k/a Hymie a/k/a HYM

John J. Harkins,
Appellant

(Criminal No. 77-28-5, W.D. of Pa.)

- - - - - -

No. 77-2010

UNITED STATES OF AMERICA

v.

GNAZZO, FELIX

Gnazzo, Felix,
Appellant

(Criminal No. 77-28-6, W.D. of Pa.)

Appendix A - Judgment Order

Submitted Under Third Circuit Rule 12 (6)
February 15, 1978

Before SEITZ, Chief Judge, ROSENN and GARTH, Circuit Judges.

JUDGMENT ORDER

After considering the contentions raised by the appellants, to-wit, (1) that the district court erred in refusing the defendants' motions to suppress evidence obtained through the interception of wire communications; (2) that the evidence pertaining to defendant Jean Liebert was insufficient to sustain her conviction since the government failed to prove that there was an exchange of lay-off wagers and other gambling information between Liebert and the Harkins-Iannelli business; (3) that the district court erred in instructing the jury that it may convict a person of violating §1955 if it finds that an independent bookmaker places or accepts lay-off wagers from another independent bookmaker; (4) that the

evidence was insufficient to sustain the conviction as to defendants in that the government failed to prove the gambling business had a gross revenue of $2,000.00 on any single day as alleged in the indictment; and (5) that appellants' sentences should be vacated and the case remanded to the district court for resentencing because the district court did not state its reasons for the particular sentences imposed; it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

By the Court,

/s/ Seitz
Chief Judge

Attest:

/s/ Thomas F. Quinn
Thomas F. Quinn
Clerk

DATED: FEB 22 1978

Appendix B - Statutes Involved

18 U.S.C. §1955:

"§1955. Prohibition of illegal gambling business

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

(b) As used in this section --

(1) "illegal gambling business" means a gambling business which --

(i) is a violation of the law of a State or political subidivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other

person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

Added Pub. L. 91-452, Title VIII, §803(a), Oct. 15, 1970, 84 Stat. 937. "

Appendix B - Statutes Involved

18 U.S. C. §2518(1)(c):

"§2518. Procedure for interception of wire or oral communications

(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

* * *

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous; " . . .

18 U.S. C. §2518(3)(c):

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if

the judge determines on the basis of the facts submitted by the applicant that --

* * *

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;" . . .

Appendix C - Corvin Affidavit

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF THE APPLICATION :
OF THE UNITED STATES FOR AN ORDER : Misc. No.
AUTHORIZING THE INTERCEPTION OF :
WIRE COMMUNICATIONS :

A F F I D A V I T
IN SUPPORT OF APPLICATION

William Paul Corvin being duly sworn, states:

1. I am a Special Agent of the Federal Bureau of Investigation. I have been so employed for approximately three (3) years, and have been assigned to the Federal Bureau of Investigation, Pittsburgh, Pennsylvania Office for the past two years, during which time I have participated in more than six (6) gambling investigations. I am an "investigative or law enforcement officer . . . of the United States" within the meaning of Section 2510(7) of Title 18, United States Code -- that is, an officer of the United States empowered to conduct investigations of and to make arrests for violations of those statutes enumerated in Section 2516 of Title 18, United States Code.

2. This affidavit seeks authorization to intercept wire communications to and from the telephone facilities bearing the numbers (412) 373-1853, subscribed to by

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Sidney Elcock, 130 Laura Lee Drive, Monroeville, Pennsylvania 15146; (412) 766-0714, subscribed to by Joseph Iannelli, 207 Enger Avenue, Pittsburgh, Pennsylvania 15214; (412) 644-4553 and (412) 644-4549, both subscribed to by the United States Government and located in the Registry Section on the second floor of the United States Post Office and Courthouse, Pittsburgh, Pennsylvania; (412) 644-4540 subscribed to by the United States Government and located on the first floor of the United States Post Office and Courthouse, Pittsburgh, Pennsylvania; and (412) 566-8329, a coin operated telephone on a wall near elevator number fourteen (14) on the first floor of the United States Post Office and Courthouse, Pittsburgh, Pennsylvania. The communications intercepted will concern violations of Sections 371, and 1955 of Title 18, United States Code, which have been and are being committed by Sidney J. Elcock, Evans Howard, Harry Zelkowitz and Louis J. Kolarich, all of whom are employees of the United States Postal Service; and an unknown individual, answering the telephone bearing telephone number (412) 766-0714, an unknown individual answering the telephone bearing telephone number (412) 373-1853, and others whose identities are as yet unknown.

3. I have participated in the investigation of gambling offenses by the individuals named in paragraph two (2) above. As a result of my personal participation

in this investigation and consideration of reports and other information provided to me by other Special Agents of the Federal Bureau of Investigation, by Inspectors and Special Investigators of the Postal Inspection Service, by the Penn Hills (Pennsylvania) Police Department and by a confidential source, I allege the facts outlined in this affidavit and the affidavit of Postal Inspector Nicholas Charles Cook which is hereby incorporated herein and is attached to this affidavit, to show that:

(a) there is probable cause to believe that Sidney J. Elcock, Evans Howard, Harry Zelkowitz, Louis J. Kolarich, an unknown individual answering the telephone bearing number (412) 766-0714, an unknown individual answering the telephone bearing telephone number (412) 373-1853, and others whose identities are as yet unknown have committed and are committing offenses involving an illegal numbers and sports betting gambling business; that said business is conducted, financed, managed, supervised, directed, or owned by the above-named individuals; that said business has been in substantially continuous operation for a period of in excess of thirty (30) days; that said business is in violation of Purdon's Pennsylvania Statutes, specifically Sections 5512 and 5514 of Title 18, and also in violation of Sections 1303 and 1955, of Title 18, United States Code; and that the above-named individuals and unknown others are conspiring to commit offenses in violation of Sections

1303 and 1955, in violation of Section 371 of Title 18, United States Code.

(b) there is probable cause to believe that the interception of particular wire communications of Sidney J. Elcock, Harry Zelkowitz, Louis J. Kolarich, an unknown individual answering the telephone bearing telephone number (412) 766-0714, an unknown individual answering the telephone bearing telephone number (412) 373-1853, and others whose identities are as yet unknown, will tend to establish the commission of the above-described offenses. In particular these wire communications will concern the transmitting and receiving of numbers and sports betting gambling information and the placing and accepting of illegal numbers and sports wagers and lay off wagers, the arrangements for the collection of betting receipts and the paying of winning bets, and further will disclose the identities of other, as yet unidentified, participants in this illegal gambling business.

(c) normal investigative procedures have been pursued and appear unlikely to succeed if continued.

(d) there is probable cause to believe that the telephone bearing the numbers (412) 373-1853, subscribed to by Sidney Elcock, 130 Laura Lee Drive, Monroeville, Pennsylvania 15146; (412) 766-0714, subscribed to by Joseph A. Iannelli, 207 Enger Avenue, Pittsburgh, Pennsylvania

15214; (412) 644-4553 and (412) 644-4549, both subscribed to by the United States Government and located in the Registry Section on the second floor of the United States Post Office and Courthouse, Pittsburgh, Pennsylvania; (412) 644-4540 subscribed to by the United States Government and located on the first floor of the United States Post Office and Courthouse, Pittsburgh, Pennsylvania, and (412) 566-8329, a coin operated telephone on a wall near elevator number fourteen (14) on the first floor of the United States Post Office and Courthouse, Pittsburgh, Pennsylvania, have been and are being used by Sidney J. Elcock, Evans Howard, Harry Zelkowitz, Louis J. Kolarich, an unknown individual answering the telephone bearing telephone number (412) 766-0714; an unknown individual answering the telephone bearing telephone number (412) 373-1653, and others whose identities are as yet unknown.

DEFINITIONS IN A NUMBERS OPERATION

From my experience in the investigation of gambling offenses and from consultation with other Special Agents of the Pittsburgh, Pennsylvania Office of the Federal Bureau of Investigation, including Special Agent James Fanning, I know that:

(a) A numbers business of any size requires the presence of an agent known as a writer who takes bets on

three digit numbers which have been bet and the money from the agents, at times through intermediaries.

(b) A numbers business further requires a layoff man, i.e. "Lay-off" bookmaker, who, for a percentage agreed upon by himself and the bankers will accept from the banker the responsibility for paying off on certain numbers which the banker feels would cause him to lose money because of the amount of money bet on these numbers if they turn out to be winning numbers. Each banker and layoff man must balance his books at the end of each day in order that he be able to determine the number of winners for that day. This helps him to make a determination of how to handle his business the following day.

(c) In order for a banker to rid himself of numbers on which there has been an excessive amount of play for one day, it is necessary for him to have someone who will accept this excess and the responsibility for paying if these numbers hit. The person who accepts these numbers from the banker is the layoff man. The banker in turn may pay a fee to the layoff man for this insurance purpose.

(d) The winning numbers are usually telephoned to central clearing centers where they are in turn given out to the bankers. The person providing this number to

the individual bankers is commonly known as a numbers service. This numbers service may receive a fee for his service. Also, some bankers will verify the daily winning number with other bankers' winning number to insure that they are not in error or that the number has not been rigged to their disadvantage.

(e) A banker must receive the winning number as soon as possible in order for him to determine his wins and losses for the day thus permitting him to balance his books with the layoff man and to know where he stands financially for the following day.

(f) Contacts with bankers and layoff men, because of the need for haste, are normally made by telephone.

DEFINITIONS IN A SPORTS OPERATION

From my experience in the investigation of gambling offenses and from consultations with other Special Agents of the Pittsburgh, Pennsylvania Office of the Federal Bureau of Investigation, I know that:

(a) A sports bookmaking business of any size requires the bookmaker to balance his books, that is, at the end of the betting on a certain event, the bookmaker hopes to achieve the ideal situation of having the same amount wagered on each of the contestants in that event.

In this way the bookmaker cannot be the loser, regardless of the outcome of the contest, since he keeps a small premium on each bet placed with him. A bookmaker thus operates on a profit margin and does not gamble on the outcome of the event.

(b) In order for a bookmaker to balance his books, it is almost always necessary for him to have another bookmaker with whom he can replace the bets which unbalance his books, so if those bets win, he will be covered by his bookmaker, i.e., insurer. This second bookmaker is known as a "layoff bookmaker," and the process is known as "laying off." This bookmaker's bookmaker also must balance his books; thus, the process may be repeated many times over and involve people in all parts of the United States.

(c) A bookmaker must also receive and furnish "line" information. This is necessary to stimulate the betting activity and to enable him to operate his business with the greatest chance of profit. The "line" is the point spread or odds in an athletic contest.

(d) When it is stated the "line" was given on a sports event by a bookmaker, this means that the odds on the game or on a particular pitcher in a baseball game referred to were given to someone by a bookmaker. "Lines" will vary throughout the day and are influenced by the amount of money wagered on the game with and by a particular

bookmaker. The "line" or odds can and do go up and down, depending upon the amount of money bet on any one game. During the baseball season, which extends from approximately April to the following October, a bookmaker will generally receive and give out the line and accept and place wagers until the time when the games are played. The betting activity must be completed before the games begin.

(e) A bookmaker will generally make a telephone call early each day and receive his "line" from a handicapper, who specializes in determining what the odds will be in an athletic contest. The bookmaker will then furnish the "line" to his customers, who will study it and make wagers then or later that day. The bettor and the bookmaker will often agree as to what the bettor's balance figure is on the first call; that is, they agree what amount of money is owed to the bookmaker or by the bookmaker from bets made previously. To do this, constant access by the bookmaker to a telephone is necessary, for the process may consume several hours.

INFORMANT INFORMATION

A confidential source, hereinafter referred to as CS#1, is an employee of the United States Postal Service and has been so employed for many years. CS#1 has provided information to federal authorities in Pittsburgh, Pennsylvania, which has led to the arrests of two (2) individuals and the conviction of one (1). The information furnished by CS#1 has

in the past proven reliable and accurate, and has been corroborated by independent investigation conducted by federal law enforcement agents. The information provided by CS#1 has never proven to be false.

During February, 1975, CS#1 told me that Evans Howard, a postal employee, is known to CS#1 from personal conversations and observations to be a numbers writer operating in the United States Post Office and Courthouse in Pittsburgh, Pennsylvania. CS#1 stated that Howard and others take bets and relay them through Sidney Elcock. CS#1 has bet with Howard who told CS#1 about Elcock.

CS#1 advised me on a day in February, 1975, that a particular number chosen by me had been played by CS#1 with Evans Howard on "all four houses" that is on all four series of wagering systems utilized for numbers wagering in Pittsburgh. I relayed the chosen number to Postal Inspector Cook. Later that day Special Investigator John McNamara advised me that he and Inspector Cook had observed the number which I had arranged to have CS#1 play with Evans Howard on a page of Sidney J. Elcock's notebook headed "4H" as one of eleven (11) numbers in that column while he observed Elcoc' relaying his numbers bets and wagering information over the pay telephone then bearing telephone number (412) 566-7954, now bearing telephone number (412) 566-8329.

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As recently as May 14, 1975, CS#1 advised that Evans Howard will not take a numbers bet from CS#1. CS#1 advised that Evans Howard told CS#1 that he is getting scared because of the gambling raids that have been conducted by the Federal Bureau of Investigation in the Pittsburgh, Pennsylvania, area. CS#1 advised that Evans Howard stated that he was getting rid of the numbers bet before he comes to work to the Post Office every morning.

On March 8, 1975, a telephone call was made by SA Pierce to telephone number (412) 766-0714. As recently as, May 10-11, 1975, respectively, this telephone number was observed by Postal Inspector David Wayne Turner to have been dialed by Kolarich, in order to obtain what appeared to be sports line information. The telephone was answered by an unidentified adult male on March 8, 1975.

On May 10, 1975, Postal Inspector Cook observed Zelkowitz in the Registry Section of the United States Post Office and Courthouse. He was seated at the desk upon which were located Federal Telecommunications System telephones bearing telephone numbers (412) 644-4553 and (412) 644-4594. Inspector Cook observed Zelkowitz to dial (412) 795-1366 (Brunotts' residence) from the Federal Telecommunications System telephone bearing telephone number (412) 644-4553. Zelkowitz read what appeared to be sports wagering information to the answering party.

On May 27, 1975, I was advised by Special Investigator, United States Postal Service, John McNamara, that on May 20, 1975, he observed Evans Howard enter elevator number fourteen, United States Post Office and Courthouse, Pittsburgh, Pennsylvania, and hand Sidney Elcock a slip of paper and

United States currency, whereupon Sidney Elcock took from his pocket his notebook and appeared to write therein.

I sent four (4) video tapes of Sidney Elcock's gambling activities taken at the United States Post Office and Courthouse, Pittsburgh, Pennsylvania during the period between November 7, 1974, and January 24, 1975, which I received from Postal Inspector Cook, to Special Agent Francis J. Cross. Special Agent Cross stated that he has been a Special Agent of the Federal Bureau of Investigation for twenty-five (25) years and has spent fourteen (14) years in the investigation of illegal gambling. He is assigned to the Federal Bureau of Investigation Laboratory, Cryptoanalysis Gambling Translation Section. He examined the four (4) video tapes and furnished the following results:

Q1 Four reels of "Scotch" video tape dated 11/7/74, 11/22/74, 1/23/75 and 1/24/75 respectively

Result of examination:

Specimen Q1 discloses the "lowest level" (writer) of a gambling operation which accepts wagers on numbers. An individual identified as "Elcock" accepted numbers wagers from unidentified persons.

Elcock telephonically relayed wagers to either a "controller" (a person who is responsible for making a tally to determine the existence of any heavily played numbers in his accounts) or the "office" (the level of the operation where wagering slips are processed to determine amount of action, winning numbers and establish provisions for payments on winning wagers). It could not be determined to which level Elcock relayed the wagers, however, usually the larger operations use the controller as a stepping stone to the office level.

The notebook revealed in specimen Q1 bears the notations: "BR," "BS," "1st," "4H" and what appears to

be "old market," probably represent "Both Races," "Both Stocks," "Early Race," "Four Houses" and "Old Stock." These code designations are commonly utilized in the Pittsburgh area, which has four winning numbers, i.e., "Early Race," "Late Race," "New Stock" and "Old Stock." The term Four Houses represents a specific number being wagered in all four categories.

INVESTIGATION CONDUCTED OUTSIDE THE UNITED STATES POST OFFICE AND COURTHOUSE, PITTSBURGH, PENNSYLVANIA

On February 12, 1975, I dialed (412) 731-3635 and (412) 731-1603 during the time of day that Elcock had been observed to call these numbers and read from his notebook containing columns of numbers. Postal Inspector Cook informed me that these numbers had been called repeatedly by Elcock in order to read from his notebook for many days during October and November of 1974 and that Elcock had again begun to call those numbers during February of 1975. I found that both telephones were answered by different unidentified females. It should be noted that it took twelve (12) minutes to get through to the telephone bearing telephone number (412) 731-1603 due to busy signals.

During March, 1975, a telephone call was made to the instruments bearing telephone numbers (412) 363-4955 (a telephone number then being used by Sidney Elcock to call in his numbers wagers) by Special Agent Pierce of the Pittsburgh Office of the Federal Bureau of Investigation. The telephone was answered by an unidentified female.

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On March 8, 1975, a telephone call was made by Special Agent Pierce to telephone number (412) 766-0714. This telephone number had been observed to have been dialed by Zelkowitz and Kolarich in order to obtain line information. The telephone was answered by an unidentified adult male.

According to the records of the Bell Telephone Company of Pennsylvania and the United States Postal Service as reviewed by me on June 11, 1975, the following telephone numbers are subscribed to as follows:

(a) (412) 795-4328 is subscribed to by Michael A. DiIorio, 468 Idlewood Road, Penn Hills, Pennsylvania 15235;

(b) (412) 795-4594 is subscribed to by Mary Lou DiIorio, 468 Idlewood Road, Penn Hills, Pennsylvania 15235; (non published)

(c) (412) 373-1853 is subscribed to by Sidney Elcock, 130 Laura Lee Drive, Monroeville, Pennsylvania 15146; (non published)

(d) (412) 644-4553 and (412) 644-4549 are Federal Telecommunications System telephones and are located in the Registry Section of the United States Post Office and Courthouse, Pittsburgh, Pennsylvania 15219;

(e) (412) 766-0714 is subscribed to by Joseph Iannelli, 207 Enger Avenue, Pittsburgh, Pennsylvania 15214;

(f) (412) 644-4540 and (412) 644-4717 are Federal Telecommunications System telephones and are located in the same general area as elevator number fourteen (14) on the first floor of the United States Post Office and Courthouse, Pittsburgh, Pennsylvania 15219;

(g) (412) 566-7954 was assigned to a coin operated telephone on a wall near elevator number fourteen (14) on the first floor of the United States Post Office and Courthouse, Pittsburgh, Pennsylvania 15219, which number was changed on March 14, 1975, to (412) 566-8329.

(h) (412) 731-1603 and (412) 731-3635 are both subscribed to by Anthony Barbaro, Sr., 109 Faybern Court, Lot Number two (2), Verona (Penn Hills Township), Pennsylvania 15147;

(i) (412) 795-1366 and (412) 242-9020 are subscribed to by Anthony Brunotts, 2020 Outlook Drive, Verona (Penn Hills), Pennsylvania 15147. On April 23, 1975, Robert M. Conn, Manager of Security, Bell Telephone Company of Pennsylvania told me

that on February 6, 1975, service was temporarily discontinued at the request of the subscriber on the instrument bearing telephone number (412) 795-1366; and service was restored at the request of the subscriber on April 18, 1975;

(j) (412) 363-4955 is subscribed to by Miss Jo DeLuca, 517 Lenora Street, Second Floor, Pittsburgh, Pennsylvania 15206; (non published)

(k) (412) 362-5045 is subscribed to by Frank Aulicino, 511 McDonald Street, 1st Floor, Pittsburgh, Pennsylvania 15206.

Surveillance of the house located at 109 Faybern Court, Lot Number two (2), Verona (Penn Hills Township), Pennsylvania conducted by me revealed the following during February, 1975:

The residence at 109 Faybern Court, Lot Number two (2) is located upon a cul de sac which makes unobserved surveillance from a short distance difficult; however, I was able to make some observations from a distance of about 900 yards using 10 x 50 field glasses and by driving by the residence at infrequent intervals so as not to draw attention.

On the dates of 11, 13, 14, 18, 20 and 24,

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February, 1975, I observed a brown over tan Chevrolet bearing Pennsylvania tag number 268 05R, which, according to the records of the Pennsylvania Bureau of Motor Vehicles as reviewed by me on February 13, 1975, is registered to Anthony Barbaro, 109 Faybern Court, Lot Number two (2), Verona (Penn Hills Township), Pennsylvania, driven by an unidentified female of about forty (40) years of age and of about five (5) feet, five (5) inches in height and weighing about 150 pounds whom I believe to be Rosanna Barbaro, who, according to the wage tax records of Penn Hills Township, as reviewed by Chief of Police Edmund Arnold, Penn Hills Police Department, on February 13, 1975, is the wife of Anthony Barbaro, Sr., leave the garage at 109 Faybern Court, Lot Number two (2), Verona (Penn Hills Township), Pennsylvania. On each of the above days she was observed to drive the car out of the garage during the period of 3:35 P.M. and 4:00 P.M. with two unidentified females whose descriptions follow:

Unidentified female number 1 is a caucasian of about five (5) feet, five (5) inches in height, and weighs about 180 pounds. She appears to be of about fifty-five (55) years of age.

Unidentified female number 2 is a caucasian of about five (5) feet, seven (7) inches in height, and weighs about 175 pounds and appears to be about fifty (50) years of age.

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The Chevrolet driven by the woman with two female passengers traveled each day to 7770 Thon Drive, Verona (Penn Hills Township), Pennsylvania. The two unidentified females left the Barbaro Chevrolet. Unidentified female number 1 then handed a package to the male driver of a silver grey Cadillac bearing Pennsylvania tag number 66C 794, which, according to the records of the Pennsylvania Bureau of Motor Vehicles as reviewed by me on February 18, 1975, is registered to Ronald Yohe, 673 Fruithurst Drive, Pittsburgh, Pennsylvania 15228. Both older unidentified females then entered a blue 1974 Plymouth bearing Pennsylvania tag number 9F4 384, which according to the records of the Pennsylvania Bureau of Motor Vehicles as reviewed by me on February 20, 1975, is registered to Barber DeLuca, 517 Lenora Street, Pittsburgh, Pennsylvania 15206, driven by an unidentified caucasian female of about twenty-eight (28) years of age, of about five (5) feet, seven (7) inches in height and weighing about 130 pounds.

On March 5, 1975, as a result of information relayed to me by Postal Inspector Cook, I conducted surveillance at 517 Lenora Street, Pittsburgh, Pennsylvania, which, according to the records of the Allegheny County Recorder of Deeds as reviewed by me on March 20, 1975, belongs to Barber and Josephine DeLuca. At about 3:10 P.M. a brown Buick bearing Pennsylvania tag number 009 84H, which,

according to the records of the Pennsylvania Bureau of Motor Vehicles as reviewed by me on March 5, 1975, is registered to Joseph A. Scherer, 914 Farragut Street, Pittsburgh, Pennsylvania, parked in front of the house. A white male, previously observed by me during December, 1974, and January, 1975, at 2020 Outlook Drive, Verona (Penn Hills Township), Pennsylvania, and believed to be Frank A. DiDario, exited the Buick and entered the DeLuca residence. At 3:20 P.M. the white male, believed to be Frank A. DiDario, reentered the Buick and drove to 914 Farragut Street, Pittsburgh, Pennsylvania. He parked in the rear and entered the residence at about 3:30 P.M. He immediately exited the house carrying a bag which he placed into another Buick in which he drove away. The second Buick bore Pennsylvania tag number 892 98M, which, according to the records of the Pennsylvania Bureau of Motor Vehicles as reviewed by me on February 3, 1975, is registered to Frank A. DiDario, 914 Farragut Street, Pittsburgh, Pennsylvania. The driver took a circuitous route to 1701 Outlook Drive, Verona (Penn Hills Township), Pennsylvania. He exited the car carrying the same bag, entered the residence at 1701 Outlook Drive and exited that house no longer carrying the bag. He then drove to 2020 Outlook Drive, the residence of Anthony Brunotts and

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Michelle Brunotts, believed to be the daughter of Frank A. DiDario.

On March 10, 1975, I conducted surveillance at 468 Idlewood Road, Penn Hills, Pennsylvania, the residence of Michael A. DiIorio and Mary Lou DiIorio according to the records of the Allegheny County Voters Registration as reviewed by me on March 20, 1975. I observed a Pontiac bearing Pennsylvania tag number 089 88Y, which, according to the Pennsylvania Bureau of Motor Vehicles as reviewed by me on March 10, 1975, is registered to Michael DiIorio, 468 Idlewood Road, Pittsburgh (Penn Hills Township), Pennsylvania 15235. At 3:00 P.M. Michael A. DiIorio, whom I recognized from his police photograph (mug shot), left the residence and drove away in the Pontiac.

On March 19, 1975, I conducted a surveillance at 468 Idlewood Road, Penn Hills Township, Pennsylvania. The residence is difficult to observe due to terrain factors. There is a curve to one side of the house and a hill to the other necessitating the taking of a position immediately in front of the house to adequately observe any activity. Such a position is too conspicuous for any surveillance other than a brief pass by the home. At 4:00 P.M. two caucasian females left the residence. The older female was unidentified female number 1 whom I saw

at the Barbaro residence carrying a package and handing it to an unidentified male in a Cadillac registered to Ronald Yohe. The other female was about forty (40) years of age, dark hair, of about five (5) feet, five (5) inches in height, of medium build, and weighing about 125 pounds. They entered a Pontiac bearing Pennsylvania tag number 7Z0 558, which, according to the records of the Pennsylvania Bureau of Motor Vehicles as reviewed by me on March 19, 1975, is registered to Mary Lou DiIorio, 468 Idlewood Road, Pittsburgh (Penn Hills Township), Pennsylvania 15235.

According to the records of the Allegheny County Voters Registration as reviewed by me on March 20, 1975, "Mary Lou DiIoria (sic.)," 468 Idlewood Road, is five (5) feet, four (4) inches in height, has black hair, and was born on September 14, 1934.

The two females drove to the corner of Verona Road and Coal Hollow Road. They stopped at a traffic light. While they were stopped, Michael A. DiIorio drove up and stopped the Pontiac registered to him. The two drivers (the forty (40) year old woman and Michael A. DiIorio) swapped automobiles. I followed Michael A. DiIorio and the older unidentified female number 1 in the Pontiac registered to Mary Lou DiIorio to 511 McDonald Street, Pittsburgh, Pennsylvania, a residence which, according to the records of the Allegheny County Recorder of Deeds as reviewed by me on March 20, 1975, belongs to Frank and Antoinette

Aulicino. The records of the Allegheny County Voters Registration as reviewed by me on March 20, 1975, indicate that Antoinette Aulicino is a white female born on March 18, 1919, has brown hair and lives at 511 McDonald Street, Pittsburgh, Pennsylvania. That description fits unidentified female number 1, who, at about 4:30 P.M., exited the Pontiac driven by Michael A. DiIorio and entered the house at 511 McDonald Street, Pittsburgh, Pennsylvania. Telephone number (412) 362-5045, which, according to Postal Inspector Nicholas Cook had been utilized by Sidney J. Elcock on several occasions to read what appeared to be numbers bets to the party answering the telephone, is subscribed to by Frank Aulicino, 511 McDonald Street, Pittsburgh, Pennsylvania 15206 (one block away from 517 Lenora Street, Pittsburgh, Pennsylvania, the residence of Barber and Josephine DeLuca).

On April 23, 1975, I conducted surveillance at the Brunotts residence at 2020 Outlook Drive, Verona (Penn Hills Township), Pennsylvania, because I had been informed that as of April 21, 1975, Sidney J. Elcock had resumed dialing a telephone number subscribed to by Anthony Brunotts by Postal Inspector Cook. At 3:55 P.M., I observed a black and white Pontiac bearing Pennsylvania tag number 720 558, which, according to the records of the

Pennsylvania Bureau of Motor Vehicles, as reviewed by me on April 23, 1975, is registered to Mary Lou DiIorio, 468 Idlewood Road, Pittsburgh (Penn Hills), Pennsylvania 15235. Driving the automobile was a caucasian female, believed to be Mary Lou DiIorio. She parked the Pontiac and entered the residence at 2020 Outlook Drive. At 4:21 P.M., I observed that female along with unidentified female number 1 and unidentified female number 2 previously seen by me during February, 1975, at the Barbaro residence at 109 Faybern Court, Lot Number two (2), Verona, (Penn Hills Township), Pennsylvania. They entered the Pontiac. They proceeded by a circuitous route to 517 Lenora Street, Pittsburgh, Pennsylvania, the residence of Barber and Josephine DeLuca. The two unidentified females exited and went into the house.

NEED FOR INTERCEPTION

Based upon the aforementioned information and my experience in this and other gambling investigations, I believe that Sidney J. Elcock, Evans Howard, Harry Zelkowitz, Louis J. Kolarich, an unidentified individual answering the telephone bearing telephone number (412) 766-0714, an unidentified individual answering the telephone bearing telephone number (412) 766-0714, an unidentified individual

answering the telephone bearing telephone number (412) 373-1853, unidentified individuals and others whose identities are as yet unknown are involved in an illegal gambling business and that monitoring the aforementioned telephones will reveal the communications of the principals among whom are Sidney J. Elcock, Harry Zelkowitz, Louis J. Kolarich, an unidentified individual answering the telephone bearing telephone number (412) 766-0714, an unidentified individual answering the telephone bearing telephone number (412) 373-1853, and others whose identities are as yet unknown inasmuch as gamblers accepting wagers or receiving or distributing wagering information over the telephone normally settle disputes and various problems and uncertainties which may arise during the course of their duties by telephonically contacting their superiors in the gambling business hierarchy. Further, monitoring these telephones will lead to the identity of numerous other individuals involved in this illegal gambling business. The interception of wire communications shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code. In order to achieve this, it is contemplated that interceptions of Federal Telecommunications System telephones bearing telephone numbers

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(412) 644-4549, (412) 644-4553, and (412) 644-4540 and the pay telephone bearing telephone number (412) 566-8329 will not be initiated until physical surveillance conducted by the Postal Inspection Service indicates that an individual who has been identified as a participant in this illegal gambling business is in close proximity to a telephone referred to above all of which are all located in the United States Post Office and Courthouse, Pittsburgh, Pennsylvania. Based upon my knowledge and experience as a Special Agent of the Federal Bureau of Investigation in the investigation of gambling cases and my association with other Special Agents who have conducted investigations of illegal gambling businesses, I believe that normal investigative procedures do not appear likely to establish the identities and degree of involvement of the various participants in the above-described illegal gambling scheme nor the identities of those individuals to whom they may relay gambling information and the identities of others whose part in the business is as yet unknown, the majority of which is evidently carried on by the use of telephones. I believe that normal investigative procedures are unlikely to reveal the full extent of the gambling conspiracy, that is, the identities of co-conspirators, aiders, and abettors, methods of operation and the hierarchy of this illegal gambling business, since the observation of the

Postal Inspection Service indicate that this gambling business is being conducted by use of the telephone.

(a) My experience and the experience of other Special Agents of the Federal Bureau of Investigation has shown that gambling raids and searches of gamblers and their gambling establishments have not, in the past, resulted in the gathering of evidence sufficient to prove all elements of the offenses involved. Through my experience and the experience of other Special Agents who have worked on gambling cases, I have found that gamblers frequently do not keep records and if such records are maintained, gamblers immediately prior to or during a physical search, frequently destroy these records by burning such records with specially-designed flash paper. Additionally, records that have been seized in past gambling cases have generally been insufficient to establish the involvement of all the conspirators in the offense, the period of operation which the seized records reflect, the gross amount of wagers accepted in a single day, the arrangements of payoffs for winning numbers and methods of transfers and payments for receipt of gambling information.

(b) Attempts to maintain surveillance on the subjects mentioned herein have proven to be extremely difficult because the participants in the alleged gambling

business are extremely surveillance conscious and suspicious of all strangers and because of the location of the Barbaro residence, unobserved surveillance is extremely difficult.

Due to the extent of the operation in the United States Post Office and Courthouse Building, surveillance, other than that already conducted by Inspector Cook and the Postal Inspection Service would appear to be almost impossible.

Under the circumstances, it is my belief that physical surveillance alone is an inadequate investigative tool, to reveal the full scope of the conspiracy and business.

(c) There are no known witnesses who would be capable of, and willing to testify concerning the alleged violations.

For the reasons set out, all normal avenues of investigation appear to be closed, and it is my belief that the only reasonable way to develop the necessary evidence of violations of Title 18, United States Code, Sections 1955 and 371, by those persons named herein, is to intercept wire communications to and from the telephones previously described.

The activity to be electronically monitored is believed to represent a continuing criminal conspiracy. It is further believed that the evidence sought will be

obtained on a continuing basis for several days succeeding the first receipt. Therefore, it is requested that this interception not automatically terminate when the sought evidence is first acquired, but continue until evidence is acquired which reveals the manner in which these persons named herein, and others as yet unknown, conduct, manage, supervise, finance or direct their illegal gambling operation, the nature of the conspiracy involved, the identities and the places of operation of the conspirators, or for a period of twenty (20) days from the date of this order, whichever is earlier.

No other application is known to have been made to any Judge for authorization to intercept or for approval of interception of wire or oral communications involving any of the same individuals, facilities, or places specified herein; however, Joseph Iannelli was intercepted pursuant to Order of Wallace S. Gourley, United States District Court Judge, miscellaneous number 5066, issued October 19, 1970, and was served with an inventory reflecting the interception of home telephone number (412) 766-0714 subscribed to in the name of Joseph Iannelli, 207 Enger Avenue, Pittsburgh, Pennsylvania.

Therefore, based on the facts related above and

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my experience as a Special Agent of the Federal Bureau of Investigation, and information provided to me by the Postal Inspection Service, I believe and have reason to believe that the allegations made herein have been sustained.

WILLIAM PAUL CORVIN
Special Agent
Federal Bureau of Investigation

Subscribed to and sworn to
before me this 13th day of
June, 1975.

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IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS	}	No. Misc.

AFFIDAVIT IN SUPPORT OF APPLICATION

Thomas J. Coyle, being duly sworn states:

1. I am a Special Agent of the Federal Bureau of Investigation. I have been so employed for over three years and have been assigned to the Federal Bureau of Investigation, Pittsburgh, Pennsylvania office for the past one year, and I have participated in the investigation of more than twenty (20) illegal gambling business. I am an "investigative or law enforcement officer . . . of the United States" within the meaning of Section 2510(7) of Title 18, United States Code--that is, an officer of the United States who is empowered by law to conduct investigations of, and to make arrests for, offenses enumerated in Section 2516 of Title 18, United States Code.

2. This affidavit seeks authorization to intercept the communications to and from the telephone facility bearing telephone number 412-931-0384, subscribed to by James Cammarata, 240 Westfield Avenue, Pittsburgh, Pennsylvania, and telephone facility bearing telephone number 412-931-0575, subscribed to by John J. Harkins, 240 Westfield Avenue, Pittsburgh, Pennsylvania. The communications intercepted will concern violations of Sections 1955 and 371 of Title 18, United States

Code, which have been and are being committed by Joseph A. Iannelli, Norma Iannelli, an individual referred to as "Willie" and "Tyce", an individual referred to as "Pidge" and "Piganowski", an individual referred to as "Hymie" and "Hym", an individual referred to as "99", an individual referred to as "Queenie" and "Queen", an unidentified male utilizing the telephones bearing telephone numbers 412-931-0384 and 412-931-0575, all of those individuals referred to in the affidavits of Special Agent William Paul Corvin and Postal Inspector Nicholas Charles Cook, and others whose identities are as yet unknown.

3. I have participated in the investigation of gambling offenses committed by the individuals named in paragraph two (2) above. As a result of my personal participation in this investigation, and a consideration of reports made to me by other Special Agents of the Federal Bureau of Investigation, I allege the facts outlined the the following paragraphs to show that:

(a) there is probable cause to believe that Joseph A. Iannelli, Norma Iannelli, an individual referred to as "Willie" and "Tyce", an individual referred to as "Pidge" and "Piganowski", an individual referred to as "Hymie" and "Hym", an individual referred to as "99", and individual referred to as "Queenie" and "Queen", an unidentified male utilizing the telephones bearing telephone numbers 412-931-0384 and 412-931-0575, all of those individuals referred to in the affidavits of Special Agent William Paul Corvin and Postal Inspector Nicholas

Charles Cook, and others whose identities are as yet unknown have committed and are committing offenses involving an illegal sports gambling business; that said business is conducted, financed, managed, supervised, directed or owned by the above-named persons; that said business has a volume in excess of $2,000 a day; that said business is in violation of Purdon's Pennsylvania Statutes, specifically Sections 5512 and 5514 of Title 18 and also in violation of Section 1955 of Title 18, United States Code; and that said persons are conspiring to commit offenses in violation of Section 1955 of Title 18, United States Code, in violation of Section 371 of Title 18, United States Code.

(b) there is probable cause to believe that particular wire communications of Joseph A. Iannelli, Norma Iannelli, an individual referred to as "Willie" and "Tyce", an individual referred to as "Pidge" and "Piganowski", an individual referred to as "Hymie" and "Hym", an individual referred to as "99", an individual referred to as "Queenie" and "Queen", an unidentified male utilizing the telephones bearing telephone numbers 412-931-0384 and 412-931-0575, and others whose identities are as yet unknown, concerning the afor described offenses will be obtained through the

interception, authorization for which is herein applied. In particular, these wire communications will concern the transmitting and receiving of sports gambling information, the placing and accepting of illegal sports bets and layoff wagers, the arrangements for collection of betting receipts and payoffs of winning bets, and the identities of the other participants in this extensive illegal sports gambling business.

(c) normal investigative procedures have been tried and reasonably appear unlikely to succeed if continued.

(d) based upon the information set forth below, affiant believes that Joseph A. Iannelli, Norma Iannelli, an individual referred to as "Willie" and "Tyce", an individual referred to as "Pidge" and "Piganowski", an individual referred to as "Hymie" and "Hym", an individual referred to as "99", an individual referred to as "Queenie" and "Queen", an unidentified male utilizing the telephones bearing telephone numbers 412-931-0384 and 412-931-0575, all of those individuals referred to in the affidavits of Special Agent William Paul Corvin and Postal Inspector Nicholas Charles Cook, and others whose identities are as yet unknown are involved in the conduct, financing, management,

supervision, direction, and ownership of an illegal gambling business in Pittsburgh, Pennsylvania.

DEFINITIONS OF A SPORTS OPERATION

From my experience in the investigation of gambling offenses and from consultations with other Special Agents of the Pittsburgh, Pennsylvania office of the Federal Bureau of Investigation, I know that:

(a) A sports bookmaking business of any size requires the bookmaker to balance his books, that is, at the end of the betting on a certain event, the bookmaker hopes to achieve the ideal situation of having the same amount wagered on each of the contestants in that event. In this way, the bookmaker cannot be the loser, regardless of the outcome of the contest, since he keeps a small premium on each bet placed with him. A bookmaker thus operates on a profit margin and does not gamble on the outcome of the event.

(b) In order for a bookmaker to balance his books, it is almost always necessary for him to have another bookmaker with whom he can replace the bets which unbalance his books, so if those bets win, he will be covered by his bookmaker, i.e., insurer. This second bookmaker is known as a "layoff bookmaker," and the process is known as "laying off." This bookmaker's bookmaker also must balance his books; thus, the process may be repeated many times over and involve people in all parts of the United States.

(c) A bookmaker must also receive and furnish "line" information. This is necessary to stimulate the betting activity and to enable him to operate his business with the

greatest chance of profit. The "line" is the point spread or odds in an athletic contest.

(d) When it is stated the "line" was given on a sports event by a bookmaker, this means that the odds on the game or on a particular pitcher in a baseball game referred to were given to someone by a bookmaker. "Lines" will vary throughout the day and are influenced by the amount of money wagered on the game with and by a particular bookmaker. The "line" or odds can and do go up and down, depending upon the amount of money bet on any one game. During the baseball season, which extends from approximately April to the following October, a bookmaker will generally receive and give out the "line" and accept and place wagers until the time when the games are played. The betting activity must be completed before the games begin.

(e) A bookmaker will generally make a telephone call early each day and receive his "line" from a handicapper, who specializes in determining what the odds will be in an athletic contest. The bookmaker will then furnish the "line" to his customers, who will study it and make wagers then or later that day. The bettor and the bookmaker will often agree as to what the bettor's balance figure is on the first call; that is, they agree what amount of money is owed to the bookmaker or by the bookmaker from bets made previously. To do this, constant access by the bookmaker to a telephone is necessary, for the process may consume several hours.

INVOLVEMENT OF TELEPHONE FACILITY BEARING TELEPHONE NUMBER 412-931-0384, SUBSCRIBED TO BY JAMES CAMARATA, 240 WESTFIELD AVENUE, PITTSBURGH, PENNSYLVANIA AND TELEPHONE FACILITY BEARING TELEPHONE NUMBER 412-931-0575, SUBSCRIBED TO BY JOHN J. HARKINS, 240 WESTFIELD AVENUE, PITTSBURGH, PENNSYLVANIA

Appendix C - Coyle Affidavit

1. On June 13, 1975, Special Agent William Paul Corvin of the Federal Bureau of Investigation and Postal Inspector Nicholas Charles Cook of the Postal Inspection Service executed affidavits before the Honorable Hubert I. Teitelbaum, United States District Judge, Western District of Pennsylvania, setting forth facts showing that Sidney J. Elcock, Evans Howard, Harry Zelkowitz, Louis J. Kolarich, an unidentified individual answering the telephone facility bearing telephone number 412-766-0714, an unidentified individual answering the telephone facility bearing telephone number 412-373-1853 and others whose identities are as yet unknown were involved in the operation of an illegal gambling business in violation of Section 1955 of Title 18, United States Code and were conspiring to commit such offenses in violation of Section 371 of Title 18, United States Code. A copy of those affidavits are attached hereto as Exhibits "C" and "D" and are incorporated in this affidavit by reference.

2. Subsequent to an examination of those affidavits Judge Teitelbaum signed Miscellaneous Court Order No. 6259 ordering Special Agents of the Federal Bureau of Investigation, United States Department of Justice and Postal Inspectors and Special Investigators of the Postal Inspection Service to intercept wire communications and install a pen register (a mechanical device designed to reveal the telephone numbers of all out-going calls) on the telephones named therein. Among the telephones subjected to electronic surveillance was telephone facility bearing telephone number 412-766-0714, subscribed to by Joseph Iannelli, 207 Enger Avenue, Pittsburgh, Pennsylvania 15214.

3. Agents of the Federal Bureau of Investigation and Postal Inspectors and Special Investigators of the Unit-

States Postal Inspection Service began monitoring telephone number 412-766-0714 on June 16, 1975. Monitoring of telephone number 412-766-0714 terminated on July 2, 1975.

4. The telephone calls monitored during that electronic surveillance indicated that a male referred to as "Joe" and a female referred to as "Norma" and "Mrs. Iannelli" made numerous out-going telephone calls and answered numerous incoming telephone calls utilizing the telephone bearing telephone number 412-766-0714, which according to the records of the Bell Telephone Company of Pennsylvania as reviewed by Special Agent William Paul Crovin on June 11, 1975, is subscribed to by Joseph Iannelli, 207 Enger Avenue, Pittsburgh, Pennsylvania 15214. These telephone calls concerned the receipt and dissemination of sports wagering information, wagers and layoff wagers, and the outstanding totals owed to or by individual bookmakers. Each day, with few exceptions, "Norma" or "Joe" received the "line" from either "Hym" or the unidentified male utilizing the telephones bearing telephone numbers 412-931-0384 and 412-931-0575, which, according to the records of the Bell Telephone Company of Pennsylvania as reviewed by me on July 20, 1975, are subscribed to by James Cammarata and John J. Harkins, both of 240 Westfield Avenue, Pittsburgh, Pennsylvania 15216. "Joe" or "Norma" appear to keep the "line" current through further out-going or incoming telephone calls to "Hym" or the unidentified male utilizing the telephones bearing telephone numbers 412-931-0384 and 412-931-0575, subscribed to by James Cammarata and John J. Harkins.

"Joe" and "Norma" disseminate the "line" using the telephone bearing telephone number 412-766-0714, Joseph Iannelli's telephone, by means of out-going telephone calls

and incoming telephone calls to and from seven (7) or eight (8) other individuals.

Each day "Joe" and/or "Norma" received bets and layoff wagers over the telephone bearing telephone number 412-766-7714, Joseph Iannelli's telephone. Special Agent Jeffrey M. Kimball, the supervisory agent of the electronic surveillance of that telephone added up the total betting activity recorded over that telephone. Special Agent Kimball has been a Special Agent of the Federal Bureau of Investigation for seven (7) years and has been a member of the Pittsburgh office of the Federal Bureau of Investigation for the past six (6) years. He has participated in the investigation of numerous major gambling cases. Special Agent Kimball told me that the average total gambling activity recorded over Joseph Iannelli's telephone was in excess of $12,000 per day based upon the telephone calls intercepted and his experience in gambling cases in the Pittsburgh, Pennsylvania, area.

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5. On June 24, 1975, Special Agent Joseph W. Vidovich monitored an outgoing telephone call from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register", a device which records the number dialed from the monitored telephone, revealed that at about 6:25 P.M. the telephone number (412) 931-0384, subscribed to by James Cammarata, was dialed. The caller, "Joe", asked for the "line" on the second Pittsburgh game. An unidentified male who answered the telephone call (hereinafter referred to as UM #1) responded that all he had was "pick em". They then discussed "99's" total.

On June 24, 1975, Special Agent Joseph W. Vidovich monitored an outgoing telephone call from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register" revealed that at about 6:48 P.M. the telephone number (412) 931-0384, subscribed to by James Cammarata, was dialed. The caller, "Joe", received "line" information from UM #1 regarding the Milwaukee baseball game.

On July 1, 1975, Special Agent Jeffrey M. Kimball monitored an outgoing telephone call from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register" revealed that at about 5:20 P.M. the telephone number (412) 931-0384, subscribed to by James Cammarata, was dialed. The caller, "Joe", talked

to "Hym" who gave "Joe" the baseball betting "line". On several additional occasions on July 1, 1975, "Joe" and "Norma" called "Hym" or "Hymie" by dialing (412) 931-0384. During the conversation sports betting information was requested and passed.

On June 14, 1975, Special Agent Norman T. Thompson monitored an outgoing telephone call from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register" revealed that at about 12:14 P.M. the telephone number (412) 931-0575, subscribed to by John J. Harkins, was dialed. The caller, "Norma", talked to UM #1, who gave her the baseball betting "line".

On June 26, 1975, Special Agent Jeffrey M. Kimball monitored an outgoing telephone call from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register" revealed that at about 12:37 P.M. the telephone number (412) 931-0575, subscribed to by John J. Harkins, was dialed. The caller, "Norma", talked to UM #1, who gave her the baseball betting line.

On July 2, 1975, Special Agent Norman T. Thompson monitored outgoing telephone calls from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register" revealed that at about 12:27 P.M. and 12:28 P.M. the telephone number (412) 931-0575, subscribed to by John J. Harkins, was dialed two (2)

times. The caller, "Norma", received a busy signal on the two occasions. She then dialed (412) 931-0384 and spoke to UM #1 who gave her the baseball betting line on the third occasion.

On several other occasions, "Norma" and "Joe", utilizing the telephone bearing telephone number (412) 766-0714, received the "line" from UM #1 and "Hym" or "Hymie" through incoming telephone calls; however, the "pen register" is unable to record the telephone number of the telephone used by the caller into a monitored telephone.

Thus, the source of the "line" appears to be UM #1 and/or "Hym" or "Hymie". The telephones used by UM #1 and "Hym" or "Hymie" for that purpose bear telephone numbers 412-931-0384 and 412-931-0575, subscribed to by James Cammarata and John J. Harkins.

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On June 26, 1975, Special Agent Jeffrey M. Kimball monitored an outgoing telephone call from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register" revealed that at about 12:37 P.M. the telephone number (412) 931-0575, subscribed to by John J. Harkins was dialed. The caller, "Norma", spoke with UM #1. "Norma" then proceeded to read total amounts wagered by "Lou", who had apparantly called UM #1, regarding "$162.00".

On June 19, 1975, Special Agent Robert J. Lenehan monitored an outgoing telephone call from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register" revealed that at about 7:32 P.M. the telephone number (412) 462-9369 was dialed. The caller, "Joe", who identified himself as "45" asked for "Queenie". The unidentified male who answered the telephone asked if this was "layoff". "Joe" indicated that it was, and the unidentified male said that he would call back later. "Joe" said that he would call back again.

On June 19, 1975, Special Agent Robert J. Lenehan monitored an outgoing telephone call from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register" revealed that at about 7:36 P.M. the telephone number (412) 462-9369 was dialed.

The caller, "Joe", who had identified himself as "45" spoke with an unidentified male. "Joe" was told by the unidentified male, "I turned it in already".

On June 19, 1975, Special Agent Robert J. Lenehan monitored an outgoing telephone call from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register" revealed that at about 7:39 P.M. the telephone number (412) 931-0384, subscribed to by James Cammarata, was dialed. The caller, "Joe", spoke with UM #1 who stated that "Queen" had already turned in to him.

The preceeding series of four (4) telephone calls indicates that bookmakers "layoff" or "turn in" to either "Joe" or "Norma" over the telephone bearing telephone number 412-766-0714, subscribed to by Joseph Iannelli, or to UM #1 over the telephones bearing telephone numbers (412) 931-0575 and (412) 931-0384, subscribed to by James Cammarata and John J. Harkins. Evidently, both locations settle up between themselves to arrive at a total figure in order to conduct this illegal gambling business.

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On June 24, 1975, Special Agent Joseph W. Vidovich monitored an outgoing telephone call from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register" revealed that at about 6:25 P.M. the telephone number (412) 931-0384, subscribed to by James Cammarata, was dialed. The caller, "Joe", told UM #1 that "99's" total was 764.

On June 24, 1975, Special Agent Joseph W. Vidovich monitored an outgoing telephone call from the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The "pen register" revealed that at about 6:48 P.M. the telephone number (412) 931-0384, subscribed to by James Cammarata, was dialed. The caller, "Joe", discussed when he would close with UM #1.

At about 7:40 P.M. on June 24, 1975, Special Agent Joseph W. Vidovich monitored an incoming telephone call made to the telephone bearing telephone number 412-766-0714, the telephone subscribed to by Joseph Iannelli. The calling party, UM #1, spoke with "Joe". "Joe" wanted to close, but UM #1 instructed him that he must stay open for awhile.

From the preceeding three (3) telephone calls, it is apparent that UM #1 is "Joe's" partner or superior in the hierarchy of this illegal gambling business, and that he and "Joe" conduct the business over the telephone using the telephones bearing telephone numbers 412-766-0714, subscribed to by Joseph Iannelli, and 412-931-0384, subscribed to by James Cammarata, which they use to contact each other.

6. IDENTIFICATION OF PRINCIPALS

Joseph Iannelli

(a) Records of the Bell Telephone Company of Pennsylvania as reviewed by Special Agent William Paul Corvin on June 11, 1975, reflect that the telephone bearing telephone number 412-766-0714 is subscribed to by Joseph Iannelli, 207 Enger Avenue, Pittsburgh, Pennsylvania. An analysis of the telephone calls monitored over that telephone reflect that on numerous occasions a male utilizing that telephone number was referred to as "Joe". "Joe" engaged in conversations concerning various aspects of the sports wagering operation previously described. For example: On June 16, 1975, at 5:39 P.M. during an incoming telephone call to the telephone bearing telephone number 412-766-0714 monitored by Special Agent Joseph W. Vidovich, an unidentified female caller addressed the male answering that telephone as "Joe" at which time "Joe" then proceeded to convey the winning numbers to the caller. On June 18, 1975 at 1:42 P.M. during out-going telephone call monitored by Special Agent John P. Morris, a female identified as "Norma" placed an out-going call from the telephone bearing telephone number 412-766-0714 to the telephone bearing telephone number 412-781-1937. "Norma" asked the unidentified male answering that telephone for "Joe Iannelli". A second unidentified male indicated that Joe Iannelli was not there. "Norma" then asked him to have Joe call her, "Mrs. Iannelli", at home.

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On June 19, 1975, at 5:32 P.M. during an incoming telephone call to the telephone bearing telephone number 412-766-0714 monitored by Special Agent Robert J. Lenehan, an unidentified male called and said "Joe?" and the male answering that telephone said "Yeah" at which time the unidentified male caller proceeded to give that day's winning numbers. On June 19, 1975, at 6:01 P.M. an out-going telephone call from the telephone bearing telephone number 412-766-0714 to the telephone bearing telephone number 412-366-1651 was monitored by Special Agent Robert J. Lenehan, during which the male caller referred to himself as "Uncle Joe". On June 16, 1975, at 2:46 P.M. during an incoming telephone call to the telephone bearing telephone number 412-766-0714 the female answering that telephone referred to herself as "Mrs. Iannelli".

Norma Iannelli

(b) Records of the Bell Telephone Company of Pittsburgh, Pennsylvania refelct that the telephone bearing telephone number 412-766-0714 is subscribed to by Joseph Iannelli, 207 Enger Avenue, Pittsburgh, Pennsylvania. The telephone calls monitored over telephone facility bearing telephone number 412-766-0714 reflect that on numerous occasions the female utilizing that telephone number was referred to as

"Norma" for exemple: On June 19, 1975 at 6:22 P.M. during an incoming telephone call to the telephone bearing telephone number 412-766-0714 monitored by Special Agent Robert J. Lenehan, an unidentified male called and said "Norma?", to which the female answering that telephone call responded. She then proceeded to give the caller the winning numbers for that day. On June 16, 1975, at 2:46 P.M. during an incoming telephone call to the telephone bearing telephone number 412-766-0714, the female answering that telephone referred to herself as "Mrs. Iannelli".

An Individual Referred to as "Willie" and "Tyce"

(c) During the course of the Court authorized electronic surveillance on telephone facility bearing telephone number 412-766-0714 numerous calls were monitored from that telephone to the telephone bearing telephone number 412-931-5098. Records of the Bell Telephone Company of Pennsylvania, as reviewed by me on July 21, 1975, reflect that the telephone bearing telephone number 412-931-5098 is subscribed to by William Tyce McCullough.

An analysis of the calls monitored over the telephone bearing telephone number 412-766-0714 reflect that on numerous occasions "Joe" utilizing that telephone number made out-going telephone calls to the telephone bearing telephone number 412-931-5098 and referred to the unknown

male who answered that phone as "Willie". In each instance, "Joe" and "Willie" would exchange gambling information, discuss scores and "line" information. For example: On June 21, 1975, at 12:39 P.M. during a conversation monitored by Special Agent Jeffrey M. Kimball from the telephone bearing telephone number 412-766-0714 to the telephone bearing telephone number 412-931-5098, "Joe" spoke to an unknown male answering that telephone. The unknown male who answered the telephone bearing telephone number 412-931-5098 was referred to as "Willie". "Willie" then proceeded to provide "Joe" with scores of baseball games and stated to "Joe" that he had it 950 "Joe's" way. On June 30, 1975, at 6:31 P.M. during a conversation monitored by Special Agent Jeffrey M. Kimball an out-going call was placed from the telephone bearing telephone number 412-766-0714 to the telephone bearing telephone number 412-931-5098. "Joe" proceeded to call the unknown male "Willie" and then gave him the "line" changes. "Willie" stated to "Joe" that he wasn't getting much business and asked how "Joe's" business was. "Joe" replied that his business was slow. On July 1, 1975, at 5:23 P.M. Special Agent Jeffrey M. Kimball monitored an out-going telephone call from the telephone bearing telephone number 412-766-0714 to the telephone bearing telephone number 412-931-5098, which was answered by an unknown male identified as "Willie". "Joe" then proceeded to read the "line" to "Willie".

On July 1, 1975, at 6:32 P.M. an out-going telephone call from the telephone bearing telephone number 412-766-0714 to the telephone bearing telephone number 412-931-5098 was monitored by Special Agent Jeffrey M. Kimball. "Joe" asked the unknown male identified as "Willie" for some "pitchers". "Joe" then instructed "Willie" to call "Her" and give "Her" the "line". "Joe" was overheard discussing gambling information with "Willie" as recently as July 2, 1975, by Special Agent Peter V. Marcoline, Jr.

An Unknown Individual Referred to as "Pidge" and "Piganowski"

(d) During the course of the Court authorized electronic surveillance on the telephone bearing telephone number 412-766-0714, numerous telephone calls were monitored from that telephone to the telephone bearing telephone number 412-682-8643. Records of the Bell Telephone Company of Pittsburgh, Pennsylvania, as reviewed by me on July 21, 1975, reflect that the telephone bearing telephone number 412-682-8643 is subscribed to by the Arsenal Bar located at 4121 Butler Street, Pittsburgh, Pennsylvania.

On each occasion the telephone bearing telephone number 412-682-8643 was called by "Joe". He spoke to an individual he referred to as "Pidge" or "Pidgeon". "Joe" was in contact with "Pidge" on numerous occasions during the course of the electronic surveillance. During the course of the conversations "Joe" disseminated "line" information and took sports wagers from "Pidge". For example: On June 16, 1975, at 7:32 P.M. during an out-going telephone call monitored

by Special Agent Jeffrey M. Kimball from the telephone bearing telephone number 412-766-0714 to the telephone bearing telephone number 412-682-6843, "Joe" spoke to an individual named "Pidge" who proceeded to give him numerous sports wagers. On June 19, 1975, at 7:55 P.M. "Joe" made an out-going telephone call from the telephone bearing telephone number 412-766-0714 to the telephone bearing telephone number 412-682-8643 which was monitored by Special Agent Robert J. Lenehan. "Joe" spoke to an individual he referred to as "Pidge" who then proceeded to give "Joe" several sports bets. On June 21, 1975, at 2:20 P.M. during a conversation monitored by Special Agent Theron J. Holstad, Joseph Iannelli made an out-going telephone call from the telephone bearing telephone number 412-766-0714 to the telephone bearing telephone number 412-682-6843 and spoke to an individual referred to as "Pidgeon". "Pidgeon" then proceeded to give "Joe" numerous sports wagers. On June 21, 1975, at 7:26 P.M. during an out-going telephone call utilizing the telephone bearing telephone number 412-766-0714 "Joe" asked to speak to "Pidge". "Joe" then followed up the nickname "Pidge" by asking to speak to "Piganowski". Another individual then came to the telephone and proceeded to give numerous sports wagers to Joseph Iannelli who then indicated that he would call back at eight o'clock. "Joe" was overheard discussing gambling information with "Pidge" as recently as July 2, 1975, by Special Agent Peter V. Marcoline, Jr.

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An Unidentified Individual Referred to as "Queen" or "Queenie"

(e) The calls monitored over the telephone bearing telephone number 412-766-0714 reflect that on numerous occasions "Joe" utilized that telephone to make out-going telephone calls to the telephone bearing telephone number 412-462-9369 and referred to the unknown individual answering that telephone as "Queen" or "Queenie". For example: On June 23, 1975, at 7:35 P.M. Joseph Iannelli utilized telephone facility bearing telephone number 412-766-0714 to place an out-going telephone call to an individual who was identified as "Queen" answering that telephone. The individual answering that telephone indicated that she was not ready yet but did place one sports bet for $1,000. On June 23, 1975, at 7:39 P.M. during a conversation monitored by Special Agent Jeffrey M. Kimball from the telephone bearing telephone number 412-766-0714 to the telephone bearing telephone number 412-462-9369, "Joe" spoke to an individual identified as "Queen" who then proceeded to place numerous layoff wagers. Again on June 23, 1975, at 7:58 P.M. during a conversation monitored by Special Agent Jeffrey M. Kimball, "Joe" placed an out-going telephone call from the telephone bearing telephone number 412-766-0714 to the telephone bearing telephone number 412-462-9369. He spoke to an individual identified as "Queenie" who stated that she had nothing on the eight o'clock game but will call at eight fifteen. "Joe" was overheard discussing gambling information with "Queenie" as recently as July 2, 1975, by Special Agent Peter V. Marcelline, Jr.

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An Unknown Individual Referred to as "99"

(f) During the course of the Court authorized electronic surveillance of the telephone bearing telephone number 412-766-0714 there were several telephone calls from an individual identified as "99" who would give layoff sports wagers to either "Norma" or "Joe". For example: On June 18, 1975, at 12:29 P.M. during a conversation monitored by Special Agent John P. Morris, "Norma", utilizing telephone facility bearing telephone number 412-766-0714, received an incoming telephone call from an individual who identified himself as "99". He stated that he couldn't get into the "other guy" and proceeded to place several layoff sports wagers. On June 21, 1975, at 6:59 P.M. as monitored by Special Agent Jeffrey M. Kimball, "Norma", utilizing the telephone bearing telephone number 412-766-0714, received an incoming telephone call from an individual who she referred to as "99". He proceeded to give her numerous large layoff sports wagers. "Joe" was overheard discussing gambling information with "99" as recently as June 29, 1975, by Special Agent Norman T. Thompson.

An Individual Utilizing Telephone Facility Bearing Telephone Number 412-931-0384 and Referred to as "Hym" or "Hymie

(g) During the course of the Court authorized electronic surveillance on the telephone bearing telephone number 412-766-0714 othere were numerous calls to an individual identified as "Hym". For example: On June 28, 1975, at 11:51 A.M. during a conversation monitored by Special Agent John P. Morris, "Joe" made an out-going telephone call and talked to the individual that he called "Hym". During the

course of the conversation, "Hym" proceeded to give "Joe" the sports "line".

An analysis of the telephone calls monitored over telephone facility bearing telephone number 412-766-0714 reflect that on several occasions "Joe" utilized that telephone, made out-going telephone calls to the telephone bearing telephone number 412-931-0384, and spoke to an individual referred to as "Hym". For example: On July 1, 1975, at 5:20 P.M. during an out-going telephone call monitored by Special Agent Jeffrey M. Kimball, "Joe" called "Hym" and "Joe" received the "line" from "Hym". "Joe" was overheard discussing gambling information with "Hym" as recently as July 2, 1975, by Special Agent Peter V. Marcoline, Jr.

An Unknown Male Utilizing Telephone Numbers 412-931-0575 and 412-931-0384 (UM #1)

(h) Records of the Bell Telephone Company of Pennsylvania reflect that telephone facilities bearing telephone numbers 412-931-0384 and 412-931-0575 are subscribed to by James Cammarata and John J. Harkins, both of 240 Westfield Avenue, Pittsburgh, Pennsylvania.

An analysis of the telephone calls monitored over the telephone bearing telephone number 412-766-0714 reflect that on numerous occasions "Joe" utilized that telephone to make out-going telephone calls to the telephones bearing telephone numbers 412-931-0575 and 412-931-0384 for the purpose of obtaining the "line" or for the purpose of discussing the overall operation of the illegal sports wagering business. Examples of these types of calls are found in paragraphs six (6), seven (7), and eight (8) of

this affidavit.

An analysis of the telephone calls monitored over the telephone bearing telephone number 412-766-0714 by Special Agent Jeffrey M. Kimball revealed that the unknown individual referred to above as "Hym" who utilized the telephone bearing telephone number 412-931-0575 is not the same unknown individual referred to here previously referred to in this affidavit as UM #1 who also utilized telephone facilities bearing telephone numbers 412-931-0575 and 412-931-0384 for the above stated purposes.

10. Based on all of the above information and my experience in other similar gambling operations, I believe that Joseph A. Iannelli, Norma Iannelli, an individual referred to as "Willie" and "Tyce", an individual referred to as "Pidge" and "Pfganowski", an individual referred to as "Hymie" and "Hym", an individual referred to as "99", an individual referred to as "Queenie" and "Queen", an unidentified male utilizing the telephones bearing telephone numbers 412-931-0384 and 412-931-0575, all of those individuals referred to in the affidavits of Special Agent William Paul Corvin and Postal Inspector Nicholas Charles Cook, and others whose identities are as yet unknown, are involved in an illegal gambling business and that they are using the telephones bearing telephone numbers 412-931-0384 and 412-931-0575 to

supply the "baseball line", wagering information, and in the management and supervision of their overall illegal sports betting business. As noted in the definitions section above, the lay-off telephone accepts wagers on wagers that are in excess of the amount individual bookmakers are willing to or are instructed to accept. This lay-off point in turn must either lay-off itself or report the totals to someone further up in the heirarchy of the illegal gambling organization. It is my belief based on my experience that the interception of wire communications to and from the telephones bearing telephone numbers 412-931-0384 and 412-931-0575 will lead to the identification of numerous other individuals involved in this illegal gambling business and further disclose the scope and direction of the illegal gambling activities of the principals.

11. Based upon my knowledge and experience as a Special Agent of the Federal Bureau of Investigation in the investigation of gambling cases and my association with other Special Agents who have conducted investigations of illegal gambling operations, I believe that normal investigative procedures do not appear reasonably likely to establish that Joseph A. Iannelli, Norma Iannelli, an individual referred to as "Willie" and "Tyce", an individual referred to as "Pidge" and "Piganowski", an individual referred to as "Hymie" and "Hym", an individual referred to as "99", an individual referred to as

"Queenie" and "Queen", an unidentified male utilizing the telephones bearing telephone numbers 421-931-0384 and 412-931-0575, all of those individuals referred to in the affidavits of Special Agent William Paul Corvin and Postal Inspector Nicholas Charles Cook, and others whose identities are as yet unknown, are conducting an illegal gambling operation, the majority of which is conducted by use of the telephone; the full extent of the gambling conspiracy that is the identities of the co-conspirators, aiders and abettors, the methods of operation, and the heirarchy of this illegal gambling operation, because surveillance, undercover operations, and other means cannot disclose what is said over the telephones -- the means by which this illegal gambling business carries on its day to day operation.

My experience, and the experience of other Special Agents of the Federal Bureau of Investigation, who have conducted investigations of illegal gambling operations and with whom affiant has consulted, has shown that gambling raids and searches of gamblers in their gambling establishment have not, in the past, resulted in the gathering of sufficient physica or other evidence to prove all elements of the offenses they have committed. Through my experience and the experience of other Special Agents who have worked on gambling cases, I have found that gamblers frequently do not keep complete records

and if such records are maintained, gamblers immediately prior to or during a physical search frequently destroy these records by dissolving them in water or by burning such records with specially designed flash paper. Additionally, records that have been seized in past gambling cases have generally been insufficient to establish the involvement of all the conspirators in the offense, the periods of operation which the seized records reflect, the gross amount of wagers accepted in a single day (because such records are difficult to interpret), the arrangements for payoffs for winning bets, and the method of transfers in payments for receipt of gambling information.

For reasons set out herein above, all normal avenues of investigations are closed, and it is my belief that the only reasonable way to develop the necessary evidence of violations of Title 18, United States Code, Section 1955 and 371, by those persons who are named herein is to intercept wire communications to and from the telephone referred to above.

12. Joseph A. Iannelli was intercepted pursuant to the order of the Honorable Wallace S. Gourley, United States District Court Judge for the Western District of Pennsylvania, Miscellaneous Number 5066, issued on October 19, 1970, and was served with an inventory reflecting his interception over his home telephone, 412-766-0714, subscribed to by Joseph Iannelli, 207 Enger Avenue, Pittsburgh, Pennsylvania. Joseph A. Iannelli,

Norma Iannelli, an individual referred to as "Willie" and "Tyce", an individual referred to as "Pidge" and "Piganowski", an individual referred to as "Hymie" and "Hym", an individual referred to as "99", an individual referred to as "Queenie" and "Queen", an unidentified male utilizing the telephone bearing telephone numbers 412-931-0384 and 412-931-0575, all of those individuals referred to in the affidavits of Special Agent William Paul Corvin and Postal Inspector Nicholas Charles Cook, and others whose identities are as yet unknown, were intercepted pursuant to the order of the Honorable Hubert I. Teitelbaum, United States District Court Judge fo. the Western District of Pennsylvania, Miscellaneous Number 6259, issued on June 13, 1975. The interception was terminated on July 2, 1975.

No other previous application to any Judge for authorization to intercept or for approval of interception of wire or oral communications involving any of the same persons, facilities, or places named in this application are known to me.

The activity to be electronically covered is believed to represent a continuing criminal conspiracy. It is further believed that the evidence sought will be obtained on a continuing basis on several days succeeding the first receipt. Therefore, it is requested that this interception

not automatically terminate when the sought evidence is first acquired but continue until evidence is acquired which reveals the manner in which those persons named herein and others as yet unknown conduct, manage, supervise, finance, or direct their illegal gambling operation, the nature of the conspiracy involved, and the identities of the conspirators and their places of operation or for a period of twenty (20) days from the date of the Order whichever is earlier.

WHEREFORE, based on the facts related above and my experience as a Special Agent of the Federal Bureau of Investigation, I believe and have reason to believe that the allegations made herein have been sustained.

Thomas J. Coyle

THOMAS J. COYLE
Special Agent
Federal Bureau of Investigation

Sworn and subscribed to before
me this 23rd day of July, 1975.

Richard Wilson

U. S. Deputy Clerk